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# TRANSCRIPT OF RECORD.

## UNITED STATES SUPREME COURT.

No. ~~1258.~~ ~~536~~ 486 222

EDWARD N. STANLEY, PLAINTIFF IN ERROR,

*against*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED JANUARY 7, 1884.

1 UNITED STATES OF AMERICA, *ss.:*

The President of the United States of America, to the Honorable the Judges of the Circuit Court of the United States for the Northern District of New York, greeting:

Whereas, lately in the Circuit Court of the United States for the Northern District of New York, before you, or some of you, in a cause between Edward N. Stanley, plaintiff, and the Board of Supervisors of the county of Albany, defendant, wherein the judgment of the said Circuit Court, entered in said cause is in the following words, viz.:

"This cause having been brought to a trial before the court without a jury (a trial by a jury having been duly waived) and a decision therein having been rendered for the plaintiff Edward N. Stanley for the sum of $61,991.20, and the decision having been filed;

"Now, on motion of Hale & Bulkley, attorneys for the plaintiff above named, it is adjudged that Edward N. Stanley, the
2 plaintiff above named, recover of the Board of Supervisors of the county of Albany, the defendant above named, the sum of $61,991.20, together with the sum of ninety-two dollars and ninety-eight cents interest on the amount above named, and $204 costs, amounting in all to the sum of $62,288.18. Judgment signed this 4th day of April, 1881."

As by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-one, the said cause came on to be heard before the said Supreme Court on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this
3 cause be, and the same is, hereby reversed with costs; and that the said defendant recover against the said plaintiff, Edward N. Stanley, twenty dollars for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is, hereby remanded to the said Circuit Court, with instructions to enter a judgment, upon the finding of facts, for the plaintiff on the fourth count, for the amount of the tax paid by Williams, with interest, and on all the other counts for the defendants.

3d April, 1882.

And afterwards, to wit, on the 24th day of April, 1882, the following entry appears of record, viz.:

On consideration of the motion to modify the judgment of this court in this cause, it is ordered that said judgment be so far modified as to permit the Circuit Court, in its discretion, to amend
4 the pleadings and hear evidence in regard to the issue or issues in the case not disposed of by the finding of facts made

by the court in the former trial, and not inconsistent with the opinion in this case.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Conrt, the twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-three.

Costs of defendant:
Clerk, paid by plaintiff.
Attorney, $20 00 } Taxed by
5 $20 00

*Clerk of the Supreme Court of the United States.*

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UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY,
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

The amended complaint of the above named plaintiff Edward N. Stanley, who is a citizen of the State of Illinois, against the Board of Supervisors of the county of Albany, a citizen of the State of New York, respectfully shows, on information and belief,

*First.* That the county of Albany is a body politic and corporate, created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of nine hundred and seven dollars and ninety cents ($907.90), with interest thereon from the 11th day of August, 1874, for money wrongfully taken
6 from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: one Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, was, on the 1st day of September, 1873, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress, entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said first day

of September, 1873, the Board of Assessors of the city of Albany, which board was by law authorized to assess, for purposes of taxation, the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act
7 authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761 of the Laws of 1866, assume and pretend to assess for taxation the said shares of said Chauncey P. Williams in the stock of said banking association at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said Chauncey P. Williams on his said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed
8 to assess the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of $2\frac{68}{100}$ per centum on the assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1874, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the
9 goods and chattels and moneys of said Chauncey P. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 11th day of August, 1874, for the use of said county; that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the Constitution

and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of
10 the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that the said assessors did intentionally, by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said
11 National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward, of said city, at the time of said assessments, several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

That there was a large amount of moneyed capital in said
12 city of Albany and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States; and that for the reasons above set forth, the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Chauncey P. Williams and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action, for value received, duly assigned and transferred to this plaintiff all his right and interest in

and to said moneys and all his claim and right of action
13 against the county of Albany arising from the premises.
Wherefore the plaintiff demands judgment against the defendant for the said sum of $907.90, with interest thereon from the 11th day of August, 1874.

*Second.* That the county of Albany is a body politic and corporate, created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of one hundred and twenty-seven dollars and eighty-four cents ($127\frac{84}{100}$), with interest thereon from the 11th day of August, 1874, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: One Martha H. Williams, a resident of the Fourteenth ward of the city of Albany, was, on the 1st day of
September, 1873, the owner of certain shares of the capital
14 stock of the National Albany Exchange Bank, a banking
association duly incorporated under and by virtue of the act of Congress, entitled "An act to provide for a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1873, the Board of Assessors of the city of Albany, which board was by law authorized to assess, for purposes of taxation, the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23, 1866, being chapter 761 of the laws of 1866, assume and pretend to assess for taxation the said shares of said Martha H. Williams
in the stock of said banking association at $100 per share,
15 being the par value thereof, deducting therefrom such sum as
was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said Martha H. Williams on her said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said Martha H. Williams upon her said shares of stock in said banking association at the rate of $2\frac{68}{100}$ per centum on the said assessed valuation, and afterwards delivered the said pretended assess-

ment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to
16 collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner drrected in said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax, with interest on the same at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1874, by distress and the sale of the goods and chattels of the person upon whose property the same was apportioned or in his possession, and to pay the same to said receiver, and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said Martha H. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 11th day of August, 1874, for the use of said county; that said Martha H. Williams duly
17 assigned and transferred the said moneys so collected and her interest therein and her claim against the county of Albany, by reason of the premises, to Chauncey P. Williams; that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the Constitution and laws of the United States, said shares of stock were not liable to assessment and taxation by State authority except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from
18 being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located, and not elsewhere.

And plaintiff further says, upon information and belief, that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual

citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National
19 Banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said asssessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank.
20 That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5,219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Martha H. Williams, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action, for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $127.84, with interest thereon from the 11th day of August, 1874.

*Third.* That the county of Albany is a body politic and
21 corporate created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of eighteen hundred and sixty-eight dollars and six cents ($1868.06), with interest thereon from the 1st day of May, 1875, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, was on the 1st day of September, 1874, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption

22 thereof," approved June 3, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1874, the Board of Assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, assume and pretend to assess for taxation the said shares of said Chauncey P. Williams in the stock of said banking association at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said Chauncey P. Williams on his
23 said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of five per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his warrant to the marshal of
24 the city of Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1875, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said Chauncey P. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 1st day of May, 1875, for the use of said county. That said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest thereon from the time it was received
25 by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State
26 within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that
27 the said assessors did intentionally, by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.
28 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Chauncey P. Williams and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly

assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the
29 plaintiff demands judgment against the defendant for the sum of $1,868.06 with interest thereon from the 1st day of May, 1875.

*Fourth.* That the county of Albany is a body politic and corporate, created by and under the laws of the State of New York, and its powers can only be exercised by the defendant, and that under the laws of said State of New York, said county can sue and be sued only in the name of the Board of Supervisors thereof; and that the said county is indebted to the plaintiff in the sum of fourteen hundred and nine dollars and thirty-three cents ($1409.33), with interest from the 27th day of May, 1876, for money had and received by said county of Albany to the use of the assignor of plaintiff, in manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, in the said county of Albany, was, on the 1st day of September, 1875, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress, entitled "An act
30 to provide for a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said first day of September, 1875, the Board of Assessors of the city of Albany, which board was by law authorized to assess, for purposes of taxation, the taxable personal property of residents of said city of Albany, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23, 1866, being chapter 761 of the Laws of 1866, and not otherwise assess for taxation, the said shares of said Chauncey P. Williams in the stock of said banking association at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole
31 amount of the capital stock thereof, and said assessment of said Chauncey P. Williams, on his said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll certified by said assessors was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assessed and carried out the taxes upon the assessment therein contained, and assessed the said Chauncey P. Williams upon the said shares of stock in said banking association at the rate of 3 56-100 per centum on the said assessed valuation, and afterwards delivered the said assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed

thereto, commanding the receiver to collect from the several persons named in the said assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed
32 in said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax with interest on the same at the rate of twelve per cent per annum, to be calculated from the first day of February, 1876, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned or in his possession, and to pay the same to said receiver, and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels of said Chauncey P. Williams, and forcibly collected the sum of fourteen hundred and nine dollars and thirty-three cents ($1409.33) for said tax and interest, which said sum was paid by said marshal to said receiver of taxes, and by said receiver was paid to the treasurer of the county of Albany on or about the 27th day of May, 1876, for the use of said county; that the said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand
33 of and from the county treasurer of said county the said sum so collected and paid into the county treasury as aforesaid, with interest thereon from the time it was received by said county treasurer, but the said treasurer did then and has hitherto neglected and refused to pay the same. And this plaintiff further says, upon information and belief, that the said act of the Legislature of the State of New York, chapter 761 of the Laws of 1866, was and is in conflict with the provisions of the laws of the United States, and especially in conflict with the provision of the laws of the United States that taxation by State authority of shares of stock in banking associations incorporated under the act of Congress above mentioned, shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, for the reason, among others, that the said act of the Legislature of the State of New York does not permit the debts owing by the owners of such bank stock to be deducted from the value of said stock in the
34 assessment thereof, although such deduction of the debts of the owner was, at the time of said assessment, and still is permitted and required by the laws of the State of New York, to be made from the value of every kind of personal property, and moneyed capital other than bank stock, in assessing the same for the purpose of taxation, and the act of the Legislature of the State of New York was and is, therefore, void so far as it did or does authorize, or purport to authorize, the assessment and taxation of shares in banking associations incorporated under the laws of the United States.

And plaintiff also says, upon information and belief, that the assessment of said shares of stock in said banking association by said Board of Assessors was at a greater rate than was assessed by said Board of Assessors upon shares of stock in a bank organized under the laws of the State of New York in said Sixth ward, and was at a greater rate than was assessed by said board upon other moneyed capital in

the hands of individual citizens of the State of New York,
35 and that for these reasons said assessments of said shares of stock, and the levy of tax thereunder, were illegal and void, and the money thereby collected, viz., the said sum of $1,409.33, was wrongfully collected and paid into the county treasury, and belonged of right to said Chauncey P. Williams, and not to said county.

And plaintiff further says, upon information and belief, that the said Chauncey P. Williams did, in pursuance of an act of the Legislature of the State of New York, entitled "An act to provide for the assessment and collection of taxes in the city of Albany," passed March 23, 1850, before said assessment was completed, present to said Board of Assessors an affidavit that the value of the personal estate owned by him, including his bank stock, after deducting his just debts, and his property invested in the stock of corporations or associations liable to be taxed therefor, and his investments in the obligations of the United States, did not exceed one dollar, and requested the said Board of Assessors to reduce his assessment
36 to the amount of one dollar, but the said Board of Assessors refused to make such reduction, although the said last named act required said assessors to make such reductions from the assessment of any taxable inhabitant of said city, upon the presentation to them of such affidavit, and although the said Board of Assessors did make such reduction from the assessment of the personal estate other than bank stock, of every taxable inhabitant of said city who made and presented to said board such affidavit; and that the said Chauncey P. Williams applied to the Supreme Court of the State of New York for a writ of mandamus to compel said assessors to make such reduction, but said Supreme Court of the State of New York denied such application, on the ground that said act of the Legislature, chapter 761 of the Laws of New York, passed in the year 1866, did not permit such reduction, but required the assessment of such bank stock at its full value, without any deduction for indebtedness; and that the Court of Appeals of the State of New York on
37 appeal affirmed the said decision and judgment of the Supreme Court of the State of New York; but that the Supreme Court of the United States, upon writ of error, reversed the said judgment of the Court of Appeals, and held that the statute, chapter 761 of 1866, in that it did not permit the reduction for indebtedness from the assessment of bank stock, which by the laws of the State of New York was required to be made from the assessment of every other kind of personal estate and moneyed capital, was in conflict with the law of the United States and void, and that said assessment on the stock of said Chauncey P. Williams was illegal and unauthorized.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action, for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys, and all his claim and right of action against the county of Albany arising from the premises, whereby the plaintiff claims and insists that an action accrued to him against the
38 defendant for the said sum of fourteen hundred and nine dol-

lars and thirty-three cents, with interest from the 29th day of May, 1876, for which sum and interest plaintiff demands judgment.

*Fifth.* That the county of Albany is a body politic and corporate created by and under the Laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the Laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of twelve hundred and two dollars and thirty-two cents ($1,202.32) with interest thereon, from the 3d day of May, 1877, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, was on the 1st day of September, 1876, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled, "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption
39 thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1876, the Board of Assessors of the city of Albany, which board was by law authorized to asssess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, assume and pretend to assess for taxation the said shares of said Chauncey P. Williams in the stock of said banking association at one hundred dollars per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said Chauncey P. Williams
40 on his said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of $3\frac{38}{100}$ per centum on the said assessed valuation, and afterward delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein

mentioned, and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his warrant
41 to the marshal of the city of Albany, commanding him to levy said tax, with interest on the same, at the rate of twelve per cent. per annum, to be calculated from the 1st day of February, 1877, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver, and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said Chauncey P. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 3d day of May, 1877, for the use of said county; that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest thereon from
42 the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says upon information and belief that the said pretended assessment was illegal and void. That under the Constitution and Laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation
43 shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater

rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

44 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5,219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Chauncey P. Williams,

45 and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $1,202.32, with interest thereon from the 3d day of May, 1877.

*Sixth.* That the County of Albany is a body politic and

46 corporate created by and under the Laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the Laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of thirteen hundred and thirty-six dollars and sixty cents (1,336.60), with interest thereon, from the seventeenth day of April, 1878, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, was on the first day of September, 1877, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and

47 redemption thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said first day of September, 1877, the Board of Assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did,

acting under color of an act of the Legislature of the State of New York entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, assume and pretend to assess for taxation the said shares of said Chauncey P. Williams, in the stock of said banking association at one hundred dollars per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said
48 Chauncey P. Williams on his said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the Supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the County of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of $3\frac{20}{100}$ per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his
49 warrant to the marshal of the city af Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent per annum, to be calculated from the first day of February, 1878, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said Chauncey P. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 17th day of April, 1878, for the use of said county; that said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says upon information and belief that the said
50 pretended assessment was illegal and void. That under the Constitution and Laws of the United States said shares of stock were not liable to assessment and taxation by State authority except so far as permisson to make such assessment was given by section 5219 of the Revised Statutes of the United States which pro-

vides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that
51 the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said
52 city.

That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in viola-
53 tion of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Chauncey P. Williams and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $1,336.60 with interest thereon from the 17th day of April, 1878.

*Seventh.* That the county of Albany is a body politic and
54 corporate created by and under the Laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the Laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of fourteen hundred and seventy-three dollars and two cents ($1,473.02) with interest thereon, from the 22d day of April, 1879, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, was on the 1st day of September, 1878, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress, entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and
55 redemption thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the 1st day of September, 1878, the Board of Assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, assume and pretend to assess for taxation the said shares of said Chauncey P. Williams, in the stock of said banking association at one hundred dollars per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said
56 Chauncey P. Williams on his said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of the said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assume to asses the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of $2\frac{84}{100}$ per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner directed in said warrant, and the said receiver
57 afterwards issued his warrant to the marshal of the city of

Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent. per annum, to be calculated from the 1st day of February, 1879, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said Chauncey P. Williams for said tax and interest, which sum was paid by said marshal to said receiver of taxes and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 22d day of April, 1879, for the use of said county; that said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest
58 thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says upon information and belief that the said pretended assessment was illegal and void. That under the Constitution and Laws of the United States said shares of stock were not liable to assessment and taxation by State authority except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief,
59 that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the

actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the
60 said city.

That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said Chauncey P. Williams and not to said county.

And plaintiff further says that the said Chauncey P. Wil-
61 liams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $1,473.02 with interest thereon from the 22d day of April, 1879.

*Eighth.* That the county of Albany is a body politic and cor-
62 porate, created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of eleven thousand six hundred and four dollars and seventy-five cents ($11,604.75), with interest thereon from the 1st day of May, 1875, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the the manner following, that is to say: Certain persons, estates and corporations named in the schedule hereinafter referred to were, on the 1st day of September, 1874, the owners of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress, entitled "An act to provide for a national currency, secured by a pledge of United States bonds, and to provide for the
63 circulation and redemption thereof," approved June 3, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1874, the Board of Assessors of the city of Albany, which board was by law authorized to assess, for purposes of taxation, the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of

stockholders of banks and surplus funds of savings banks," passed April 23, 1866, being chapter 761 of the Laws of 1866, assume and pretend to assess for taxation the said shares of said persons, estates and corporations in the stock of said banking association at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association, to the whole amount of the capital stock thereof, and said pretended assess-
64 ment of said persons, estates and corporations on their said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said persons, estates and corporations upon their said shares of stock in said banking association at the rate of five per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to collect, from the several persons named in the said pretended assessment roll, the amount of the tax therein mentioned, and to pay over the same in the manner directed in said warrant, and
65 the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax, with interest on the same at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1875, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned or in his possession, and to pay the same to said receiver, and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said persons, estates and corporations for said taxes and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany on or about the 1st day of May, 1875, for the use of said county; that the names of said persons, estates and corporations so assessed and taxed on their shares of stock in said banking association as aforesaid, together with the number of such shares on which each of said persons,
66 estates and corporations was so assessed and taxed, and the amount forcibly collected from each of them and paid into the treasury of the county of Albany, are correctly stated in schedule A, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations, and the representatives of said estates, did duly assign to Chauncey P. Williams, of the city of Albany, all their and each of their claims and demands against the county of Albany by reason of the premises, and that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county

the said sum so collected and paid into the county treasury as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has, hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the
67 Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located, and not elsewhere.

And plaintiff further says, upon information and belief, that
68 the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said asssessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

69 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury,

and belonged of right to the said persons, estates, and corporations, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and
70 interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $11,604.75, with interest thereon from the 1st day of May, 1875.

*Ninth.* That the county of Albany is a body politic and corporate created by and under the Laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the Laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of eight thousand one hundred and forty-seven dollars and twenty-six cents ($8,147.$\frac{26}{100}$, with interest thereon, from the 27th day of May, 1876, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: certain persons, estates, and corporations named
71 in the schedule hereinafter referred to, were on the first day of September, 1875, the owners of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3d, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said first day of September, 1875, the Board of Assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, assume and pretend to assess for taxation the
72 said shares of said persons, estates, and corporations in the stock of said banking association at one hundred dollars per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said pretended assessment of said persons, estates and corporations, on their said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the County of Albany at their next meeting; and the said Board of Supervisors

thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said persons, estates and corporations, upon their said shares of stock in said banking association at the rate of $3\frac{56}{100}$ per centum on the
73 said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1876, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said persons, estates and corporations, for said taxes and interest, which sum was paid by said marshal to said
74 receiver of taxes and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 27th day of May, 1876, for the use of said county; that the names of said persons, estates and corporations, so assessed and taxed on their shares of stock in said banking association as aforesaid, together with the number of such shares on which each of said persons, estates and corporations were so assessed and taxed, and the amount forcibly collected from each of them and paid into the treasury of the county of Albany, are correctly stated in Schedule B, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations, and the representatives of said estates did duly assign to Chauncey P. Williams, of the city of Albany, all their and each of their claims and demands against the County of Albany, by reason of the premises, and that said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into
75 the county treasury, as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says upon information and belief that the said pretended assessment was illegal and void. That under the Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by Section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each

State may determine and direct the manner and place of taxing all the shares of national banking associations located within the
76 State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief,
77 that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city, at the time of said assessments, several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

78 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5,219 of the Revised Statutes of the United States. And that for the reasons above set
9 forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid to the county treasury, and belonged of right to the said persons, states, and corporations, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly signed and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $8,147.26, with interest thereon from the 27th day of May, 1876.

*Tenth.* That the county of Albany is a body politic and corporate, created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county

thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said persons, estates and corporations, upon their said shares of stock in said banking association at the rate of $3\frac{56}{100}$ per centum on the
73 said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax with interest on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1876, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said persons, estates and corporations, for said taxes and interest, which sum was paid by said marshal to said
74 receiver of taxes and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 27th day of May, 1876, for the use of said county; that the names of said persons, estates and corporations, so assessed and taxed on their shares of stock in said banking association as aforesaid, together with the number of such shares on which each of said persons, estates and corporations were so assessed and taxed, and the amount forcibly collected from each of them and paid into the treasury of the county of Albany, are correctly stated in Schedule B, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations, and the representatives of said estates did duly assign to Chauncey P. Williams, of the city of Albany, all their and each of their claims and demands against the County of Albany, by reason of the premises, and that said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into
75 the county treasury, as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says upon information and belief that the said pretended assessment was illegal and void. That under the Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by Section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each

State may determine and direct the manner and place of taxing all the shares of national banking associations located within the
76 State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief,
77 that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city, at the time of said assessments, several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

78 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5,219 of the Revised Statutes of the United States. And that for the reasons above set
79 forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to the said persons, estates, and corporations, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $8,147.26, with interest thereon from the 27th day of May, 1876.

*Tenth.* That the county of Albany is a body politic and
80 corporate, created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county

can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of seven thousand eight hundred and twenty-two dollars and thirty-four cents ($7,822.34), with interest thereon from the third day of May, 1877, for money wrongfully taken from the assignor of the plaintiff and wrongfully received and held by said county of Albany in the manner following, that is to say: Certain persons, estates and corporations, named in the schedule hereinafter referred to, were, on the 1st day of September, 1876, the owners of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by
a pledge of United States bonds, and to provide for the cir-
81 culation and redemption thereof," approved June 3, 1864,
established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1876, the Board of Assessors of the city of Albany, which board was by law authorized to assess, for purposes of taxation, the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York, entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23, 1866, being chapter 761 of the Laws of 1866, assume and pretend to assess for taxation the said shares of said persons, estates and corporations in the stock of said banking association at one hundred dollars per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association
to the whole amount of the capital stock thereof, and said pre-
82 tended assessment of said persons, estates and corporations
on their said shares of stock, was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said persons, estates and corporations upon their said shares of stock in said banking association at the rate of 3.38-100 per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto, commanding the said receiver to collect from the several persons named in the said pretended assessment roll the
amount of the tax therein mentioned, and to pay over the
83 same in the manner directed in said warrant, and the said
receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax, with interest on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1877, by distress and sale of the goods

and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver, and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said persons, estates and corporations, for said taxes and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany, on or about the 3d day of May, 1877, for the use of said county; that the names of said persons, estates and corporations so assessed and taxed on their shares of stock in said banking association as aforesaid, together with the
84 number of such shares on which each of them was so assessed and taxed, and the amount forcibly collected from each of them and paid into the treasury of the county of Albany, are correctly stated in Schedule C, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations and the representatives of said estates did duly assign to the plaintiff all their and each of their claims and demands against the county of Albany, by reason of the premises, and that said Chauncey P. Williams did, before the assignment to the plaintiff, hereinafter mentioned, demand of and from the county treasurer of said county, the said sum so collected and paid into the county treasury as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the Con-
85 stitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located, and not elsewhere.

And plaintiff further says, upon information and belief,
86 that the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in

of them and paid into the treasury of the county of Albany, are correctly stated in schedule D, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations and the representatives of said estates did duly assign to Chauncey P. Williams of the city of Albany all their and each of their claims and demands against the county of Albany by reason of the premises, and that said Chauncey P. Williams did before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the
94 said pretended assessment was illegal and void. That under the Constitution and Laws of the United States said shares of stock were not liable to assessment and taxation by State authority except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that
95 the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

96 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that

such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected, and paid into the county
97 treasury, and belonged of right to the said persons, estates and corporations, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $7,357.94 with interest thereon from the 16th day of April, 1878.

*Twelfth.* That the county of Albany is a body politic and
98 corporate created by and under the laws of the State of New York, and that its powers can only be exercised by the defendant, and that under the laws of said State of New York said county can sue and be sued only in the name of the Board of Supervisors thereof, and that the said county is liable to the plaintiff in the sum of six thousand two hundred and forty-three dollars and twenty cents ($6,243.20), with interest thereon from the 21st day of April, 1879, for money wrongfully taken from the assignor of the plaintiff, and wrongfully received and held by said county of Albany in the manner following, that is to say: certain persons, estates and corporations named in the schedule hereinafter referred to, were on the 1st day of September, 1878, the owners of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incorporated under and by virtue of the act of Congress entitled "An act to provide for a national currency secured by a pledge of United States bonds and to provide for the circu-
99 lation and redemption thereof," approved June 3, 1864, established and doing business in the Sixth ward of the city of Albany, and that on or about the said 1st day of September, 1878, the Board of Assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation the taxable personal property of residents of said city of Albany and real property in said city, did, acting under color of an act of the Legislature of the State of New York entitled "An act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23, 1866, being chapter 761 of the Laws of 1866, assume and pretend to assess for taxation the said shares of said persons, estates and corporations, in the stock of said banking association at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the

whole amount of the capital stock thereof, and said pretended
100 assessment of said persons, estates and corporations on their said shares of stock was included by said Board of Assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll was delivered by said Board of Assessors to the Supervisor of said Sixth ward, who delivered the same to the Board of Supervisors of the county of Albany at their next meeting; and the said Board of Supervisors thereupon assumed to assess and carried out the taxes upon such pretended assessment therein contained, and assumed to assess the said persons, estates and corporations upon their said shares of stock in said banking association at the rate of $2\frac{84}{100}$ per centum on the said assessed valuation, and afterwards delivered the said pretended assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the said receiver to collect from the several persons named in the said pretended assessment roll the amount of the tax therein mentioned and to pay over the same in the manner directed in
101 said warrant, and the said receiver afterwards issued his warrant to the marshal of the city of Albany, commanding him to levy said tax, with interest, on the same, at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1879, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels and moneys of said persons, estates and corporations for said taxes and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver of taxes was paid to the treasurer of the county of Albany, or on about the 21st day of April, 1879, for the use of said county; that the names of said persons, estates and corporations so assessed and taxed on their shares of stock in said banking association as aforesaid, together with the number of such shares on
102 which each of said persons, estates and corporations was so assessed and taxed, and the amount forcibly collected from each of them, and paid into the treasury of the county of Albany, are correctly stated in schedule E, hereto annexed, which is hereby made a part of this count; that the said several persons and corporations and the representatives of said estates did duly assign to Chauncey P. Williams, of the city of Albany, all their and each of their claims and demands against the county of Albany by reason of the premises, and that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with the interest thereon from the time it was received by the said county treasurer, but the said treasurer did then, and has hitherto neglected and refused to pay the same.

And plaintiff says, upon information and belief, that the
103 said pretended assessment was illegal and void. That under

the Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere.

And plaintiff further says, upon information and belief, that
104 the said assessors did intentionally by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank, at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward of said city at the time of said assessments several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

105 That there was a large amount of moneyed capital in said city of Albany, and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said Board of Assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States. And that for the reasons above set forth the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county
106 treasury, and belonged of right to the said persons, estates, and corporations, and not to said county.

And plaintiff further says, that the said Chauncey P. Williams, before the commencement of this action for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys and all his claim and right of action against the

county of Albany arising from the premises. Wherefore the plaintiff demands judgment against the defendant for the said sum of $6,243.20 with interest thereon from the 21st day of April, 1879.

And the plaintiff prays judgment for the costs of this action as well as for the several sums, with interest thereon, for which judgment is demanded in the several counts of this complaint.

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HALE & BULKLEY,
*Attorneys for Plaintiff.*

NORTHERN DISTRICT OF NEW YORK,
*City and County of Albany, ss.:*

Matthew Hale, of said city and district, being duly sworn, says that he is one of the attorneys for the plaintiff above named, and that the foregoing complaint is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief. That the reason why this verification is not made by plaintiff is that plaintiff is not within said county or district, in which his attorneys reside. The grounds of deponent's belief are a personal inspection of the assessment rolls mentioned in the complaint, and information derived from examination of witnesses in this action and other cases, and from the immediate assignor of the plaintiff.

MATTHEW HALE.

Sworn to before me this
1st day of August, 1882,
LOUIS HAENDEL,
[L. S.] *Notary Public, Albany, N. Y.*

## SCHEDULE A.

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| 108 | Mary E. Allen | 25 | $115 31 |
| | Estate C. W. Bender | 50 | 230 62 |
| | William Bender | 50 | 230 62 |
| | William J. Blackall | 14 | 64 57 |
| | Anson H. Blakeman | 10 | 46 12 |
| | Estate Gould Blakeman | 10 | 46 12 |
| | Henry H. Bulkley | 20 | 92 25 |
| | Martha P. Butler | 10 | 46 12 |
| | Nicholas Clapper | 11 | 50 75 |
| | Amelia A. Cobb | 50 | 230 62 |
| | Thomas B. Cole | 13 | 59 95 |
| | Thomas Comstock | 20 | 92 25 |
| | Commerce Insurance Company | 80 | 369 00 |
| | Theodore F. Cornell | 25 | 115 30 |
| | Ann Darling | 10 | 46 12 |
| | Estate William Dixon | 10 | 46 12 |
| 109 | Edward A. Durant | 50 | 230 62 |
| | Gideon D. Eames | 30 | 138 37 |
| | Milo R. Eames | 20 | 92 25 |
| | Hester S. Emerson | 10 | 46 12 |
| | Azuba G. Fairchild | 5 | 23 05 |

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Daniel H. Gardner | 4 | $18 45 |
| | Charlotte Gardner | 1 | 4 60 |
| | Sarah M. Gardner | 2 | 9 22 |
| | William Gould | 320 | 1,400 76 |
| | Sarah M. Gould | 2 | 9 22 |
| | Estate of John Gould | 8 | 36 90 |
| | Estate of Alexander Greer | 25 | 115 31 |
| | Thomas H. Greer | 25 | 115 31 |
| | Sylvester Hale | 122 | 562 73 |
| | Ebenezer Hill | 70 | 322 87 |
| | Harriet Hilton | 10 | 46 12 |
| 110 | Charles B. Lansing | 25 | 115 31 |
| | Mary L. G. Lewis | 1 | 4 60 |
| | Sarah A. Lansing | 15 | 69 18 |
| | Shiboleth B. McCoy | 250 | 1,155 12 |
| | James McElroy | 5 | 23 05 |
| | William McElroy | 100 | 461 25 |
| | Estate of James McNaughton | 50 | 230 62 |
| | Peter McNaughton | 50 | 230 62 |
| | Lansing Merchant | 60 | 276 75 |
| | Henry T. Mesick | 60 | 276 75 |
| | Mary Patrick | 10 | 46 12 |
| | Spencer S. B. Peck | 10 | 46 12 |
| | Nancy L. Peck | 40 | 184 50 |
| | Henry C. Peck | 10 | 46 12 |
| | Samuel S. Peck | 10 | 46 12 |
| | Myron R. C. Peck | 10 | 46 12 |
| 111 | Estate of Mary E. Peckham | 20 | 92 25 |
| | Estate of Amos Pilsbury | 70 | 322 89 |
| | Robert C. Pruyn | 10 | 46 12 |
| | John V. L. Pruyn | 145 | 668 80 |
| | Sarah and Agnes Pruyn | 45 | 207 56 |
| | James Roy | 10 | 46 12 |
| | Adam Shields | 3 | 13 83 |
| | Elizabeth F. Spoor | 10 | 46 12 |
| | William G. Thomas | 100 | 461 25 |
| | Lemon Thomson | 50 | 230 62 |
| | William G. Thomas, Ex'r | 20 | 92 25 |
| | Francis Vail | 15 | 69 18 |
| | Margaret Ann Van Loon | 10 | 46 12 |
| | Catharine Van Schaack | 10 | 46 12 |
| | John L. Voorhees | 10 | 46 12 |
| | James C. Vischer, Ex'r | 5 | 23 05 |
| 112 | Michael Warner | 10 | 46 12 |
| | Clement Warner | 20 | 92 25 |
| | Estate of John T. Wendover | 30 | 138 37 |
| | George P. Wilson | 15 | 69 18 |
| | Abram F. Wilson | 20 | 92 25 |
| | Josiah B. Williams | 50 | 230 62 |
| | Estate of Abraham Wing | 20 | 92 25 |

## SCHEDULE B.

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Mary E. Allen | 25 | $82 90 |
| | Estate of C. W. Bender | 50 | 165 80 |
| | William M. Bender | 50 | 165 80 |
| | William J. Blackall | 14 | 46 41 |
| | Anson H. Blakeman | 10 | 33 16 |
| | Estate of Gould Blakeman | 10 | 33 16 |
| | Martha P. Butler | 10 | 33 16 |
| | Nicholas Clapper | 11 | 36 47 |
| | Amelia A. Cobb | 50 | 165 80 |
| 113 | Thomas B. Cole | 13 | 43 08 |
| | Thomas Comstock | 20 | 66 32 |
| | Commerce Insurance Company | 80 | 265 28 |
| | Theodore F. Cornell | 25 | 82 90 |
| | Ann Darling | 10 | 33 16 |
| | Sarah Dey Ermand | 5 | 16 58 |
| | Estate of William Dickson | 10 | 33 16 |
| | Edward A. Durant | 50 | 165 80 |
| | Gideon D. Eames | 30 | 99 48 |
| | Milo R. Eames | 20 | 66 32 |
| | Hester S. Emerson | 10 | 33 16 |
| | John T. Foote | 10 | 33 16 |
| | Azuba G. Fairchild | 5 | 16 58 |
| | Daniel H. Gardner | 4 | 13 24 |
| | Charlotte Gardner | 1 | 3 30 |
| | Sarah M. Gardner | 2 | 6 62 |
| | William Gould | 320 | 1,061 15 |
| | Sarah M. Gould | 2 | 6 62 |
| | Thos. H. Greer | 50 | 165 80 |
| | Sylvester Hale | 122 | 404 54 |
| 114 | Estate of Ebenezer Hill | 70 | 232 12 |
| | Harriet Hilton | 10 | 33 16 |
| | Sarah A. Lansing | 15 | 49 74 |
| | Carolina M. Lathrop | 10 | 33 16 |
| | Charles B. Lansing | 25 | 82 90 |
| | Mary L. G. Lewis | 1 | 3 30 |
| | Shiboleth B. McCoy | 250 | 829 03 |
| | James McElroy | 5 | 16 58 |
| | Wm. McElroy | 100 | 331 60 |
| | John McElroy | 10 | 33 16 |
| | Peter Monteath | 10 | 33 16 |
| | Estate of James McNaughton | 50 | 165 80 |
| | Lansing Merchant | 60 | 198 96 |
| | Henry T. Mesick | 60 | 198 96 |
| | Mary Patrick | 10 | 33 16 |
| | Spencer S. B. Peck | 10 | 33 16 |
| 115 | Nancy L. Peck | 40 | 132 64 |
| | Henry C. Peck | 10 | 33 16 |

| Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|
| Samuel S. Peck | 10 | $33 16 |
| Myron R. C. Peck | 10 | 33 16 |
| Estate of Amos Pilsbury (C. P. Williams & A. V. DeWitt, Executors) | 70 | 232 12 |
| John V. L. Pruyn | 145 | 480 82 |
| Robert C. Pruyn | 10 | 33 16 |
| Agnes Pruyn | 45 | 149 22 |
| James Roy | 10 | 33 16 |
| Adam Shields | 3 | 9 92 |
| Eliz. F. Spoor | 10 | 33 16 |
| Wm. G. Thomas | 100 | 331 60 |
| Lemon Thomson | 50 | 165 80 |
| Francis Vail | 15 | 49 74 |
| Catherine Van Schaack | 10 | 33 16 |
| 116 James C. Visscher, Exr'r | 5 | 16 58 |
| Thomas E. Van Loon | 10 | 33 16 |
| Richard Van Rensselaer | 1 | 3 30 |
| Richard Van Rensselaer, Adm'r | 6 | 19 88 |
| Richard Van Rensselaer, Ex'r | 5 | 16 58 |
| Edward Visscher | 12 | 39 78 |
| John L. Voorhees | 10 | 33 16 |
| Clement Warren | 20 | 66 32 |
| Estate of John T. Wendover | 30 | 99 48 |
| Geo. P. Wilson | 15 | 49 74 |
| Abram F. Wilson | 20 | 66 32 |
| Josiah B. Williams | 50 | 165 80 |
| Estate of Abram Wing | 20 | 66 32 |

## SCHEDULE C.

| | | |
|---|---|---|
| Mary E. Allen | 25 | 78 07 |
| Estate of C. W. Bender | 50 | 156 14 |
| Wm. M. Bender | 50 | 156 14 |
| 117 William J. Blackall | 14 | 43 71 |
| Anson H. Blakeman | 10 | 31 22 |
| Estate of Gould Blakeman | 10 | 31 22 |
| Martha P. Butler | 10 | 31 22 |
| Nicholas Clapper | 11 | 34 34 |
| Amelia A. Cobb | 50 | 156 14 |
| Thomas B. Cole | 13 | 40 60 |
| Thomas Comstock | 20 | 62 44 |
| Commerce Insurance Company | 80 | 249 76 |
| Theodore F. Cornell | 25 | 78 07 |
| Ann Darling | 10 | 31 22 |
| Sarah Dey Ermand | 5 | 15 61 |
| Estate Wm. Dickson | 10 | 31 22 |
| Edward A. Durant | 50 | 156 14 |
| Gideon D. Eames | 30 | 93 66 |
| Milo R. Eames | 20 | 62 44 |

| | Names of Shareholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| 118 | Hester S. Emerson | 10 | $31 22 |
| | John T. Foote | 10 | 31 22 |
| | Azuba G. Fairchild | 5 | 15 61 |
| | Daniel H. Gardner | 4 | 12 49 |
| | Charlotte Gardner | 1 | 3 13 |
| | Sarah M. Gardner | 2 | 6 24 |
| | William Gould | 320 | 999 33 |
| | Sarah M. Gould | 2 | 6 25 |
| | Thos. H. Greer | 25 | 78 07 |
| | Thos. H. Greer, ex'r | 25 | 78 07 |
| | Estate of John Gould | 8 | 24 97 |
| | Sylvester Hale | 122 | 381 00 |
| | Estate of Ebenezer Hill | 70 | 218 60 |
| | Harriet Hilton | 10 | 31 22 |
| | Sarah A. Lansing | 15 | 46 84 |
| | Carolina M. Lathrop | 10 | 31 22 |
| 119 | Charles B. Lansing | 25 | 78 07 |
| | Mary L. G. Lewis | 1 | 3 12 |
| | Shiboleth B. McCoy | 250 | 780 72 |
| | James McElroy | 5 | 15 61 |
| | William McElroy | 100 | 312 30 |
| | John McElroy | 10 | 31 22 |
| | Peter Monteath | 10 | 31 22 |
| | Estate of James McNaughton | 50 | 156 14 |
| | Lansing Merchant | 60 | 187 37 |
| | Henry T. Mesick | 60 | 187 37 |
| | Mary Patrick | 10 | 31 22 |
| | Spencer L. B. Peck | 10 | 31 22 |
| | Nancy L. Peck | 40 | 124 91 |
| | Henry C. Peck | 10 | 31 22 |
| | Samuel L. Peck | 10 | 31 22 |
| | Myron R. C. Peck | 10 | 31 22 |
| 120 | Estate of Amos Pilsbury (C. P. Williams and A. V. De Witt, Ex'rs) | 70 | 218 60 |
| | John V. L. Pruyn | 145 | 452 82 |
| | Robert C. Pruyn | 50 | 156 14 |
| | Agnes Pruyn | 45 | 140 53 |
| | James Roy | 10 | 31 22 |
| | Adam Shields | 3 | 9 37 |
| | Eliza F. Spoor | 10 | 31 22 |
| | William G. Thomas | 100 | 312 30 |
| | Lemon Thomson | 50 | 156 14 |
| | Francis Vail | 15 | 46 84 |
| | Catharine Van Schaack | 10 | 31 22 |
| | James C. Visscher | 5 | 15 61 |
| 121 | Thomas E. Van Loon | 10 | 31 22 |
| | Edward Visscher | 13 | 37 47 |
| | John L. Voorhees | 10 | 31 22 |
| | Clement Warren | 20 | 62 44 |

| | Names of Shareholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Estate of John T. Wendover | 30 | $93 66 |
| | George P. Wilson | 15 | 46 84 |
| | Abram F. Wilson | 20 | 62 44 |
| | Josiah B. Williams | 50 | 156 14 |
| | Estate of Abram Wing | 20 | 62 44 |
| | Henry H. Bulkley | 20 | 62 44 |
| | SCHEDULE D. | | |
| | Mary E. Allen | 25 | 73 44 |
| | Estate of C. W. Bender | 50 | 146 88 |
| | William M. Bender | 50 | 146 88 |
| | William J. Blackall | 14 | 41 12 |
| | Anson H. Blakeman | 10 | 29 36 |
| 122 | Estate of Gould Blakeman | 10 | 29 36 |
| | Martha P. Butler | 10 | 29 36 |
| | Nicholas Clapper | 11 | 32 30 |
| | Amelia A. Cobb | 50 | 146 88 |
| | Thomas B. Cole | 13 | 38 18 |
| | Thomas Comstock | 20 | 58 74 |
| | Commerce Insurance Co | 80 | 235 00 |
| | Theodore F. Cornell | 25 | 73 44 |
| | Mary A. Darling | 10 | 29 36 |
| | Sarah Dey Ermand | 5 | 15 68 |
| | Estate of Wm. Dickson | 10 | 29 36 |
| | Edward A. Durant | 50 | 146 88 |
| | Gideon D. Eames | 30 | 88 12 |
| | Milo R. Eames | 20 | 58 74 |
| | Hester S. Emerson | 10 | 29 36 |
| | John T. Foote | 10 | 29 36 |
| 123 | Azuba G. Fairchild | 5 | 14 68 |
| | Daniel H. Gardner | 4 | 11 74 |
| | Charlotte Gardner | 1 | 2 92 |
| | Sarah M. Gardner | 2 | 5 86 |
| | William Gould | 310 | 910 64 |
| | Sarah M. Gould | 2 | 5 86 |
| | Thos. H. Greer | 25 | 73 44 |
| | Thos. H. Greer, Ex'r | 25 | 73 44 |
| | Estate of John Gould | 8 | 23 50 |
| | William Gould, Jr. | 10 | 29 36 |
| | Sylvester Hale | 122 | 358 38 |
| | Estate of Ebenezer Hill | 70 | 205 62 |
| | Harriet Hilton | 10 | 29 36 |
| | Sarah A. Lansing | 15 | 44 06 |
| | Carolina M. Lathrop | 10 | 29 36 |
| | Charles B. Lansing | 25 | 73 44 |
| 124 | Mary L. G. Lewis | 1 | 2 92 |
| | Shiboleth B. McCoy | 250 | 734 40 |
| | James McElroy | 5 | 14 68 |
| | Wm. McElroy | 100 | 293 76 |

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Peter Monteath | 10 | $29 36 |
| | Estate of James McNaughton | 50 | 146 88 |
| | Estate of Peter McNaughton | 50 | 146 88 |
| | Lansing Merchant | 60 | 176 24 |
| | Henry T. Mesick | 60 | 176 24 |
| | Mary Patrick | 10 | 29 36 |
| | Spencer S. B. Peck | 10 | 29 36 |
| | Henry C. Peck | 10 | 29 36 |
| | Samuel S. Peck | 10 | 29 36 |
| | Myron R. C. Peck | 10 | 29 36 |
| | Estate of Amos Pilsbury (C. P. Williams and A. V. Dewitt, Executors) | 70 | 205 62 |
| 125 | John V. L. Pruyn | 145 | 425 94 |
| | Robert C. Pruyn | 10 | 29 36 |
| | Agnes Pruyn | 45 | 132 18 |
| | James Roy | 10 | 29 36 |
| | Adam Shields | 3 | 8 80 |
| | Eliz. F. Spoor | 10 | 29 36 |
| | Wm. G. Thomas | 100 | 293 76 |
| | Lemon Thomson | 50 | 146 88 |
| | Francis Vail | 15 | 44 06 |
| | Catharine Van Schaack | 10 | 29 36 |
| | James C. Visscher, Ex'r | 5 | 14 68 |
| | Thomas E. Van Loon | 10 | 29 36 |
| | Edward Visscher | 12 | 35 24 |
| | John L. Voorhees | 10 | 29 36 |
| | Mrs. N. L. Van Alstyne | 40 | 117 50 |
| | Richard Van Rensselaer | 1 | 2 92 |
| 126 | Richard Van Rensselaer, Admin | 6 | 17 62 |
| | Richard Van Rensselaer, Ex'r | 5 | 14 68 |
| | Clement Warren | 20 | 58 74 |
| | S. H. Wendover | 30 | 88 12 |
| | Geo. P. Wilson | 15 | 44 06 |
| | Abram F. Wilson | 20 | 58 74 |
| | Josiah B. Williams | 50 | 146 88 |
| | Estate of Abram Wing | 20 | 58 74 |

## SCHEDULE E.

| | | | |
|---|---|---|---|
| | Mary E. Allen | 25 | 65 16 |
| | Mrs. Maria Bender | 50 | 130 34 |
| | William M. Bender | 50 | 130 34 |
| | William J. Blackall | 14 | 36 48 |
| | Anson H. Blakeman | 10 | 26 06 |
| | Estate of Gould Blakeman | 10 | 26 06 |
| | Martha P. Butler | 10 | 26 06 |
| 127 | Sarah A. Clapper | 11 | 28 66 |
| | Amelia A. Cobb | 50 | 130 34 |
| | Thomas B. Cole | 13 | 33 89 |
| | Phœbe Comstock | 20 | 52 14 |

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Commerce Insurance Co | 80 | $208 56 |
| | Theodore F. Cornell | 25 | 65 16 |
| | Ann Darling | 10 | 26 06 |
| | Sarah Dey Ermand | 5 | 13 02 |
| | Estate of Wm. Dixon | 10 | 26 06 |
| | Edward A. Durant, | 50 | 130 34 |
| 128 | Milo E. Eames | 30 | 78 20 |
| | Milo R. Eames | 20 | 52 14 |
| | Hester S. Emerson | 10 | 26 06 |
| | Azuba G. Fairchild | 5 | 13 02 |
| | Daniel H. Gardner | 4 | 10 43 |
| | Charlotte Gardner | 1 | 2 60 |
| | Sarah M. Gardner | 2 | 5 21 |
| | William Gould | 310 | 808 20 |
| | Sarah M. Gould | 2 | 5 22 |
| | Thomas H. Greer | 25 | 65 16 |
| | Thomas H. Greer, Ex'r | 25 | 65 16 |
| | Estate of John Gould | 8 | 20 84 |
| | William Gould, Jr. | 10 | 26 06 |
| | Sylvester Hale | 22 | 57 35 |
| | Oscar L. Hasey | 10 | 26 06 |
| | Estate of Ebenezer Hill | 70 | 182 48 |
| 129 | Harriet Hilton | 10 | 26 06 |
| | Sarah A. Lansing | 15 | 39 10 |
| | Carolina M. Lathrop | 10 | 26 06 |
| | Charles B. Lansing | 25 | 65 16 |
| | Mary L. G. Lewis | 1 | 2 59 |
| | Shiboleth B. McCoy | 250 | 651 78 |
| | James McElroy | 5 | 13 02 |
| | William McElroy | 100 | 260 70 |
| | Peter Monteath | 10 | 26 06 |
| | Estate of James McNaughton | 50 | 130 34 |
| | Henry P. McNaughton | 16 | 41 70 |
| | Lansing Merchant | 60 | 156 42 |
| | Henry T. Mesick | 60 | 156 42 |
| | Jessie McN. Miller | 16 | 41 70 |
| | Mary Patrick | 10 | 26 06 |
| | Spencer S. B. Peck | 10 | 26 06 |
| 130 | Henry C. Peck | 10 | 26 06 |
| | Samuel S. Peck | 10 | 26 06 |
| | Myron R. C. Peck | 10 | 26 06 |
| | Estate of Amos Pilsbury (C. P. Williams and A. V. DeWitt, Executors, | 70 | 182 48 |
| | Estate of John V. L. Pruyn | 145 | 378 02 |
| | Robert C. Pruyn | 10 | 26 06 |
| | Agnes Pruyn | 45 | 117 32 |
| | Estate of James Roy | 10 | 26 06 |
| | Adam Shields | 3 | 7 80 |
| | Eliz. F. Spoor | 10 | 26 06 |

| Names of Shareholders. | No. of shares. | Tax collected. |
|---|---|---|
| Wm. G. Thomas | 100 | $260 70 |
| Lemon Thomson | 50 | 130 34 |
| Francis Vail | 15 | 39 10 |
| Catharine Van Schaack | 10 | 26 06 |
| James C. Visscher, Executor | 5 | 13 02 |
| Thomas E. Van Loon | 10 | 26 06 |
| 131 Edward Visscher | 12 | 31 28 |
| John L. Voorhees | 10 | 26 06 |
| Mrs. N. L. Van Alstyne | 40 | 104 28 |
| Richard Van Rensselaer | 1 | 2 59 |
| Richard Van Rensselaer, Adm'r | 6 | 15 64 |
| Richard Van Rensselaer, Ex'r | 5 | 12 78 |
| Clement Warren | 20 | 58 74 |
| S. H. Wendover | 30 | 78 20 |
| Geo. P. Wilson | 15 | 39 10 |
| Abram F. Wilson | 20 | 52 14 |
| Josiah B. Williams | 50 | 130 34 |
| Estate of Abram Wing | 20 | 66 32 |
| Jennie McN. Wright | 18 | 46 93 |

(Endorsed:) Service of amended complaint is this day admitted. ALBANY, *August* 3, 1882.

R. W. PECKHAM,
132 *Attorney for Defendant.*

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At a term of the Circuit Court of the United States for the northern district of New York, held at the chambers of the circuit judge at Syracuse, on the 9th day of January, 1883.

Present—Hon. WILLIAM J. WALLACE, *Circuit Judge.*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

On reading and filing the affidavits of Alice W. Kelley and Matthew Hale, together with the notice of motion for discontinuance on the part of the plaintiff, and on reading and filing the affidavits of William J. Weaver on the part of the defendant, after hearing Mr. Matthew Hale of counsel for plaintiff for motion, and Mr. Rufus W. Peckham of counsel for defendant in opposition.

It is ordered that the said motion be granted, and that this action be discontinued as to the fifth, sixth, seventh, tenth, eleventh and twelfth counts therein, leaving the case to proceed as to the other counts of said complaint, upon the payment by plaintiff to the defendant of the entire costs including taxable disbursements of the defendant in defending this action to be taxed. Leave is granted to

defendant to amend his answer as it may be advised, within seven days, without prejudice to the trial of the action at the next term of this court at plaintiff's election.

WILLIAM J. WALLACE.

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UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

This action having been tried before the court without a
133 jury, a jury trial having been waived by a consent in writing signed by the respective parties herein, and the proofs and allegations of the respective parties having been heard and considered, I, Alfred C. Coxe, District Judge for the said Northern District of New York, holding the term of said Circuit Court at which such action was tried, do hereby find the following facts and conclusions of law:

*First.* That the allegation in the amended complaint in regard to the citizenship of the plaintiff, the citizenship and powers and liabilities of the defendant, the organization and capital of the National Albany Exchange Bank, the ownership of the shares of the capital stock of the National Albany Exchange Bank, the assessment of the stockholders in said bank named in said complaint by the Board of Assessors of the city of Albany, the names and residences of said stockholders, the collection of taxes from said stockholders, and the payment of the same to the county treasurer of the county
134 of Albany, and the demand made by Chauncey P. Williams before the commencement of this action of the treasurer of the county of Albany are true, as therein set forth.

*Second.* That the allegations in the fourth count of said amended complaint, as to the presentation to the said Board of Assessors by said Chauncey P. Williams of the affidavit of his indebtedness, and the request by him for a reduction of his assessment on his bank stock, and the refusal of said Board of Assessors to make such reduction, and the application by the said Williams to the Supreme Court of the State of New York for a writ of mandamus, and the subsequent legal proceedings thereon, including the decisions of the Supreme Court of the United States are true, as set forth in said fourth count.

*Third.* That the amount collected from the said Chauncey P. Williams and paid to the treasurer of the county of Albany, on the 29th day of May, 1876, was $1,409.33, as alleged in said fourth count.

*Fourth.* That the plaintiff has failed to establish the allega-
135 tions in said complaint that the several assessments therein referred to were at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of said State.

Also I find as a conclusion of law:

1. That the plaintiff is entitled to recover upon the fourth count of the amended complaint.

II. That the plaintiff is not entitled to recover upon any other count of said amended complaint.

III. That the plaintiff is entitled to judgment against the defendant for the sum of fourteen hundred and nine dollars and thirty-three cents ($1,409.33), with interest from the 29th day of May, 1876, amounting at the date hereof to the sum of six hundred and twenty-five dollars and ninety-seven cents ($625.97), and amounting in the whole to the sum of two thousand and thirty-five dollars and thirty cents ($2,035.30), together with the costs of the action accruing subsequent to the order of discontinuance of some of the
136 counts herein, which order was granted on the 9th day of January, 1883.

Dated *March* 30, 1883.

(Signed) ALFRED C. COXE.

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UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

An order having been heretofore rendered discontinuing the above entitled action as to the fifth, sixth, seventh, tenth, eleventh and twelfth counts of the amended complaint therein, upon the payment of certain costs by the plaintiff to the defendant, which costs have been paid, and the cause having been brought on to trial upon the counts of said amended complaint remaining after such discontinuance and the answer thereto before the court without a jury (a trial by jury having been duly waived) and a decision therein
137 having been rendered for the defendant upon all the counts except the fourth count, and for the plaintiff Edward N. Stanley for the sum of two thousand and thirty-five dollars and thirty cents ($2,035.30), and the decision having been filed, now, on motion of Hale and Bulkley, attorneys for the plaintiff above named,

It is adjudged, that the plaintiff has failed to establish any cause of action against the defendant upon any count in said amended complaint except the fourth count thereof, and that Edward N. Stanley, the said plaintiff, do recover of the board of supervisors, of the county of Albany, the above named defendant, the sum of two thousand and thirty-five dollars and thirty cents ($2,035.30) together with eighty-three dollars and ninety-five cents costs of said action accruing since said order of discontinuance, amounting in all to the sum of two thousand one hundred nineteen dollars and twenty-five cents ($2,119.25).

Judgment signed this 23d day of March, 1883, 5 o'clock, P. M.

WILLIAM H. BRIGHT,
*Clerk.*

138 UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY. } *Original Complaint.*

NORTHERN DISTRICT OF NEW YORK, *ss.:*

The above named plaintiff, Edward N. Stanley, who is a citizen of the State of Illinois, by Hand & Hale, his attorneys, complains of the Board of Supervisors of the County of Albany, a citizen of the State of New York, defendant, and alleges on information and belief that the County of Albany is a body politic and corporate, created by and under the laws of the State of New York, and its powers
139 can only be exercised by the defendant, and that under the laws of said State of New York, said county can sue, and be sued, only in the name of the Board of Supervisors thereof; and that the said county is indebted to the plaintiff in the sum of nine hundred and seven dollars and ninety cents ($907.90), with the interest thereon from the 11th day of August, 1874, for money had and received by said County of Albany to the use of the assignee of plaintiff in manner following, that is to say: One Chauncey P. Williams, a resident of the Fourteenth ward of the city of Albany, in the said County of Albany was, on the first day of September, 1873, the owner of certain shares of the capital stock of the National Albany Exchange Bank, a banking association duly incor-
140 porated under and by virtue of the act of Congress, entitled "An Act to provide for a National currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, established and doing business in the Sixth Ward of the city of Albany, and that on or about the said first day of September, 1873, the board of assessors of the city of Albany, which board was by law authorized to assess for purposes of taxation, taxable personal property of residents of said city of Albany, did, acting under color of an act of the Legislature of the State of New York, entitled "An Act authorizing the taxation of stockholders of banks and surplus funds of savings banks," passed April 23d, 1866, being chapter 761, of the Laws of 1866, and
141 not otherwise, assess for taxation the said shares of said Chauncey P. Williams in the stock of said banking assocation at $100 per share, being the par value thereof, deducting therefrom such sum as was in the same proportion to such par value as was the assessed value of the real estate of such banking association to the whole amount of the capital stock thereof, and said assessment of said Chauncey P. Williams on his said shares of stock was included by said board of assessors in the assessment roll of the Sixth ward of the city of Albany, and said assessment roll, certified by said assessors, was delivered by said board of assessors to the supervisor of said Sixth ward, who delivered the same to the Board of

142 Supervisors of the county of Albany at their next meeting, and the said Board of Supervisors thereupon assessed and carried out the taxes upon the assessment therein contained, and assessed the said Chauncey P. Williams upon his said shares of stock in said banking association at the rate of $\$2\frac{68}{100}$ per centum on the said assessed valuation, and afterwards delivered the said assessment roll to the receiver of taxes of the city of Albany, with their warrant annexed thereto commanding the receiver to collect from the several persons named in the said assessment roll the amount of the tax therein mentioned, and to pay over the same in the manner directed in said warrant, and the said receiver afterwards issued his

143 warrant to the marshal of the city of Albany, commanding him to levy said tax, with interest on the same at the rate of twelve per cent per annum, to be calculated from the 1st day of February, 1874, by distress and sale of the goods and chattels of the person upon whose property the same was apportioned, or in his possession, and to pay the same to said receiver and to return said warrant within thirty days after the date thereof; that the said marshal thereupon proceeded to and did levy upon the goods and chattels of said Chauncey P. Williams, and forcibly collected the sum of nine hundred and seven dollars and ninety cents ($\$907\frac{90}{100}$) for said tax and interest, which sum was paid by said marshal to said receiver of taxes, and by said receiver was paid to the treasurer of the county of Albany, on or about the 11th day of August,

144 1874, for the use of said county; that said Chauncey P. Williams did, before the assignment to the plaintiff hereinafter mentioned, demand of and from the county treasurer of said county the said sum so collected and paid into the county treasury, as aforesaid, with interest thereon from the time it was received by said county treasurer, but the said treasurer did then, and has hitherto, neglected and refused to pay the same.

And this plaintiff further says upon information and belief, that the said act of the Legislature of the State of New York, chapter 761 of the Laws of 1866, was and is in conflict with the provisions of the laws of the United States, and especially in conflict with the provision of the laws of the United States that taxation by State authority of shares of stock in banking associations, incor-

145 porated under the act of Congress above mentioned, shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, for the reason, among others, that the said act of the Legislature of the State of New York does not permit the debts owing by the owners of such bank stock to be deducted from the value of said stock in the assessment thereof, although such deduction of the debts of the owner was, at the time of said assessment, and still is permitted and required by the laws of the State of New York to be made from the value of every kind of personal property and moneyed capital

146 other than bank stock, in assessing the same for the purpose of taxation, and the said act of the Legislature of the State of New York was and is therefore void, so far as it did or does authorize

or purport to authorize, the assessment and taxation of shares in banking associations, incorporated under the laws of the United States.

And the plaintiff also says upon information and belief, that the assessment of said shares of stock in said banking association by said board of assessors was at a greater rate than was assessed by said board of assessors upon shares of stock in a bank organized under the laws of the State of New York, in said Sixth ward, and was at a greater rate than was assessed by said board upon
147 other moneyed capital in the hands of individual citizens of the State of New York, and that for these reasons said assessments of said shares of stock, and the levy of tax thereunder, were illegal and void, and the money thereby collected, viz.: the said sum of $907\frac{99}{100}$ was wrongfully collected and paid into the county treasury, and belonged of right to said Chauncey P. Williams, and not to said county.

And plaintiff further says that the said Chauncey P. Williams, before the commencement of this action, for value received, duly assigned and transferred to this plaintiff all his right and interest in and to said moneys, and all his claim and right of action against the county of Albany arising from the premises, whereby the
148 plaintiff claims and insists that an action accrued to him against the defendant for the said sum of $907\frac{99}{100}$, with interest thereon from the 11th day of August, 1874.

The original complaint contained twelve counts. All the other counts, except the fourth, were substantially the same as the foregoing, except as to the names of the stockholders and the amounts assessed and collected, as to which it corresponded with the amended complaint contained in the record.

The fourth count of the original complaint was identical with the fourth count of said amended complaint.

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149 UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY. } *Answer.*

For answer to the complaint of the above named complainant, the above named defendant, by Rufus W. Peckham, its attorney.

I. Denies any knowledge or information sufficient to form a
150 belief whether the plaintiff was at the time of the commencement of this action, or since has been a citizen of the State of Illinois.

II. Denies that it or the county of Albany is indebted to the plaintiff in any sum whatever, or was so indebted at the time of the commencement of this action.

III. Denies any knowledge or information sufficient to form a

belief whether the marshal of the city of Albany ever, at
151 any time, levied upon the property of one Chauncey P. Williams, or any other stockholder in the National Albany Exchange Bank, or collected any sum whatever from said Williams or any other stockholder, at any time, in any manner, or for any purpose whatever. This denial applies to every count in the said complaint, where any allegation is made of any levy by the marshal upon the property of any alleged stockholder in said bank, or the collection of any money therefrom for any purpose or at any
152 time.

IV. Denies any knowledge or information sufficient to form a belief as to the truth of any allegation in any one of the counts in said complaint, as to the marshal paying to the receiver of taxes of the city of Albany, or the receiver of taxes of said city paying to the county treasurer of the said county of Albany any sum whatever, at any time, as the proceeds or results of the sale of the
153 property of the said Williams, or of any other stockholder in said bank.

V. Denies any knowledge or information sufficient to form a belief whether any demand was ever made by said Williams at any time for any purpose upon the said county treasurer for the payment to him of any sum collected by said treasurer, as alleged, or
154 whether said treasurer refused such demand.

VI. Denies that the said act of the Legislature of the State of New York, known as chapter 761 of the Laws of 1866, is in conflict with the provisions of the Laws of the United States, or that said act of the Legislature was or is void.

VII. Denies any knowledge or information sufficient to form a belief whether any of the assessments mentioned and described in any of the counts in said complaint contained, were at a
155 greater rate than was assessed upon shares of stock in any bank organized under the Laws of the State of New York, in the Sixth ward of the city of Albany, or that any of such assessments were at a greater rate than were assessed upon other moneyed capital in the hands of individual citizens; and it denies that any assessment, or levy mentioned or set forth or alluded to in any count of the complaint was illegal or void, or that any money alleged to have been collected, in any of the counts in said complaint,
156 was wrongfully collected or paid into the county treasury, or that any money collected belonged to said Williams or any other stockholder in said bank.

VIII. Denies any knowledge or information sufficient to form a belief as to any assignment being made by any of the stockholders in said bank to said Williams, of any claim against the defendant or of any assignment being made by said Williams to said plaintiff, of any nature or description, for any purpose or at any time, and the above denials apply to each count in said complaint, where
157 any allegation is made of any assignment by any of such stockholders to said Williams, or of any assignment by said Williams to the plaintiff herein.

IX. Denies that the Supreme Court of the United States has decided that the said act of the Legislature of New York was void, or that any assessment made thereunder was illegal or void.

X. Denies any knowledge or information sufficient to form a belief, whether the persons named in the eighth and subsequent counts in said complaint, in schedules therein, ever were owners of any shares in said bank or ever were taxed upon any such shares,
158 or ever paid any tax thereon, or that any tax was ever collected from any or all of them, as alleged in said eighth and subsequent counts in said complaint, or that none of the persons, representatives of estates or corporations mentioned in the schedules, contained in the eighth or subsequent counts in said complaint, were at the time of such assessment taxable inhabitants of said Sixth ward or of the city of Albany, or liable to assessment or taxation for personal property in said ward, with the exceptions in said complaint stated.

XI. The defendants further allege, that all the assessments mentioned in the plaintiff's complaint were duly and regularly
159 made by a board of assessors, who had full jurisdiction and authority over the property and persons assessed, and such assessments were legal and valid, and were all made in good faith.

Wherefore, the defendant asks that the complaint may be dismissed with costs.

RUFUS W. PECKHAM,
*Attorney for defendant.*

*Office and Post-office address, Albany, N. Y.*

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160 UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

*Amended Answer and Stipulation.*

For a further and amended answer to plaintiff's complaint defendant alleges in addition as follows:

1. Defendants for further answer to plaintiff's complaint aver that the causes of action set up in the complaint herein were assigned to the plaintiff and the plaintiff was made the plaintiff herein, for the purpose of creating a case cognizable under the act of Congres
161 passed March 3, 1875, and he was improperly or collusively joined for such purpose.

2. For a further answer, defendants aver that the court has no jurisdiction over any cause of action assigned to plaintiff herein, which at the time of the commencement of this action involved less than $500, and defendants aver that many alleged causes of action involved less than $500, at the time of the commencement of this action, and were assigned to plaintiff's assignor, C. P. Williams, by the parties owning them, and by him assigned to plaintiff for the

purpose of thereby combining such different causes of action, involving separately less than $500, into the ownership of one man, and calling it one whole cause of action, and for the purpose of thereby improperly or collusively making the plaintiff a party to this
162 action, and of creating a case in regard to each one of such alleged causes of action, which in the combined form should be cognizable in this court.

3. And for a further and separate defense, defendants allege that the assignment to the plaintiff in this case was merely colorable, and the real interest remains and has always remained in the plaintiff's assignor, C. P. Williams, together with his assignors, and the court has no jurisdiction over such a party plaintiff, or the cause of action in his person.

PECKHAM & ROSENDALE,
*Defendants' Attorneys.*

Stipulated that the foregoing may be regarded as part of the existing answer in the above action, and added thereto.

*January* 13, 1883.

HALE & BULKLEY,
*Plaintiff's Attorney.*

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163 UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF ALBANY COUNTY.
} *Stipulation No.* 2.

The plaintiff hereby stipulates that on the trial of this action he will not claim that his amended complaint so far as the form of action is concerned, is in any way different from the form existing in the original complaint, nor will the plaintiff claim that he has
164 any right under the amended complaint to prove any failure of the assessors to take the proper oath, or to prove that the assessors did not make an assessment upon the shares of stock of plaintiff's assignors until after the statutory time, unless he has such right under the allegations made to show that plaintiff and his assignors were assessed upon their bank stock at a greater rate than was assessed upon other moneyed capital, etc.

ALBANY, *October* 17, 1882.

HALE & BULKLEY,
*Attorneys for Plaintiff.*

UNITED STATES CIRCUIT COURT,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY. } *Stipulation No. 3.*

It is hereby stipulated between the attorneys for the above parties, that the original answer of the defendant, may be deemed the answer to the amended complaint, and as to any new allegations, which are contained in the amended complaint, they are to be deemed
165 denied, the same as if an answer formally denying them were interposed.

Dated *Oct.* 28, 1882.

HALE & BULKLEY,
*Plaintiff's Attorneys.*
PECKHAM & ROSENDALE.
*Defendants' Attorneys.*

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CIRCUIT COURT OF THE UNITED STATES,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY. } *Bill of Exceptions on the part of Plaintiff.*

This action was brought by the plaintiff, a citizen of the
166 State of Illinois, to recover back certain taxes alleged to have been wrongfully collected from certain stockholders in the National Albany Exchange Bank, during the years 1874 to 1879, both inclusive, and paid into the treasury of the county of Albany,

Upon the first trial, which took place in October, 1880, a judgment was recovered in favor of the plaintiff, which was afterwards reversed by the Supreme Court of the United States, to which court the said judgment was taken by writ of error. The cause was then remanded to this court, with permission to allow an amendment to the pleadings and a new trial thereon.

The complaint was thereafter amended by leave of this court, and after such amendment, upon motion of the plaintiff, the case
167 was discontinued as to the counts which related to the claim for taxes assessed after the year 1875.

The case again came on for trial in March, 1883, before the Hon. Alfred C. Coxe, district judge of the northern district of New York, without a jury, a jury trial having been duly waived by written stipulation filed with the clerk of the court.

The pleadings as amended, including the amended answer served on the part of the defendant, and stipulations respecting the same are annexed hereto. The original complaint in the action is also hereto annexed, together with the stipulation relating to the plaintiff's not claiming any right to offer evidence as to the manner of

attaching the assessment to the roll and the form of the oath.

168 The allegations in the complaint in regard to the citizenship of the plaintiff, the citizenship and powers and liabilities of the defendant; the organization and capital of the National Albany Exchange Bank; the ownership of the shares of the capital stock of said bank; the assessment of the stockholders of said bank named in said complaint by the Board of Assessors of the city of Albany; the names and residences of said stockholders; the collection of taxes from said stockholders, and payment of the same to the county treasurer of the county of Albany, and the demand made by Chauncey P. Williams, before the commencement of this action, of the treasurer of the county of Albany, were proved or admitted to be true as therein set forth, as were also the allegations

169 of the compiaint with reference to the assignments by the respective stockholders of the said bank of their claims against the county of Albany, by reason of the matters alleged in the complaint, including the assignment made by the said Chauncey P. Williams to the plaintiff.

CHAUNCEY P. WILLIAMS was sworn as a witness for plaintiff, and testified as follows:

That is a copy of an assignment I made to Mr. Stanley.

The following is a copy:

For value received, I hereby assign and transfer to Edward N. Stanley, of the city of Chicago, in the State of Illinois, all my right and interest in and to the moneys collected of me in the year 1874, upon a tax assessed against me as the holder of shares of

170 stock in the National Albany Exchange Bank, and paid into the treasury of the county of Albany; and also all my right to and interest in the moneys collected of myself and other stockholders of said National Albany Exchange Bank in the years 1875, 1876, 1877, 1878 and 1879, for taxes assessed against myself and said other stockholders upon the shares of stock in said bank owned by myself and them respectively, and paid into the treasury of the county of Albany; all said moneys having been unlawfully collected, and the said other stockholders having heretofore assigned and transferred to me their right and interest in and to said moneys claimed to have been thus unlawfully collected as aforesaid, and also all their right and claim against the county of Albany arising therefrom.

And I also, for value received, hereby assign and transfer to said

171 Stanley all claim and right of action against the said county of Albany or the Board of Supervisors of said county, which I have either on account of said sums thus unlawfully collected from me and paid into the county treasury, or on account of said sums so unlawfully collected from said other stockholders and paid into said county treasury, and by said other stockholders respectively assigned to me.

Witness my hand and seal, the 22d day of July, 1880.

C. P. WILLIAMS. [L. S.]

Sealed and delivered in presence of

*Cross-examined* by MR. PECKHAM.

Q. Mr. Williams, you have been a stockholder in the Albany Exchange Bank for how long? A. I couldn't say for how long; thirty years or more.

Q. How long have you been an officer in it? A.
172 Fully thirty years; that is, taking the present bank and its predecessor.

Q. Of the National Bank? A. Twenty years nearly; just about eighteen.

Q. How long have you been cashier of it? A. I was cashier from its organization in 1865 until, I think, 1875; sometime in the autumn or winter of 1875, or 1875–6.

Q. Since then you have been president? A. Yes, sir.

Q. You interested yourself in questions of taxation upon the shares of the National banks, at an early date, did you not? A. Well, I naturally felt some interest in the subject.

Q. And before 1873 had you had some interviews with the board of assessors, or any member of the board of assessors of
173 Albany, in relation to the taxation of shares in your bank? A. Yes, sir.

Q. Do you remember when the first one was? A. I do not, but I should think it was as far back as 1868 or 1869.

Q. Do you remember with whom that was? A. I do not distinctly remember; it was before Mr. Weaver came into the office; I am not quite sure as to the individual member of the board.

Q. From that time up to the time when Mr. Weaver came in had you continued your agitation of that question with the assessors or any member of the board? A. Simply so far as to question both the method of its assessment and its rate; what political economists would call its burden; the general sum to be taxed.

174 Q. You were then claiming that the rate was greater than that on other moneyed capital? A. Yes, sir.

Q. You at that time were claiming also a right to deduct your indebtedness from the sum of your personal property, including the bank shares? A. Yes, we claimed the legal right that follows from the general restriction that the assessment could not be at a greater rate.

Q. The first proceeding of a legal nature that you took in relation to bringing up the question of the assessment upon these stocks was one taken by your counsel Mr. Hale, in the nature of certiorari? A. I think the first legal proceeding was that.

Q. In that certiorari you raised the questions already spoken of, in regard to the assessment being at a greater rate than upon other moneyed capital? A. Yes, sir.

Q. The next year you, through your counsel, took pro-
175 ceedings upon a case agreed upon for a mandamus to compel the reduction of your assessment by the assessors? A. Wasn't that concurrent with the certiorari, or was it prior to it?

Q. Soon after that you brought an action against the assessors to recover from them the amount taxed which you paid on your own

shares of stock for the year 1874? A. My impression is that that action was brought — I am not sure, the first tax for which we brought suit was a tax levied in 1873 or not, including, I think, my individual shares. The tax of 1874 the shareholders joined with me in, and whether the two are included together in the suit against the assessors I am not quite sure.

176 Q. That suit against the assessors was grounded upon a claim on your part that the assessment was without jurisdiction? A. Yes, sir.

Q. That action for recovery and also your proceedings for a mandamus — were they carried on at your sole expense, or was the expense shared by the shareholders in your bank? A. Carried on at my personal expense.

Q. This mandamus proceeding was carried *pro forma* through the State courts and taken to the Supreme Court of the United States? A. I think it was.

Q. Your suit against the assessors was tried before a referee, and a report had against you, confirmed by the State courts? A.

177 Yes, sir.

Q. And carried through to the Supreme Court of the United States and there affirmed? A. Yes, equivalent to an affirmance.

Q. Prior to the argument of those cases in the Supreme Court of the United States had you issued any circulars to the stockholders of your bank in relation to those suits or in relation to this question of taxation? A. In relation to the general question of taxation I had a possible relation to the suits; I think probably I had.

Q. Have you any of those circulars? A. Yes, in obedience to the subpœna I brought all the circulars that we have ever issued, I think; the five or six that were stated in the subpœna are

178 here, and in chronological order as issued, and I think including all we have ever issued.

Mr. Peckham offered the same in evidence, of which the following are copies:

ALBANY, N. Y., *August* 21, 1874.

To ..... *a Stockholder in the National Albany Exchange Bank:*

The directors of this bank have, for many years, regarded the taxation levied upon the shares of our bank as excessive and

179 unjust; but, being disinclined to litigation, and in the hope that our tax authorities would in time see the injustice they were perpetrating and correct it, we have delayed any action to enforce our legal rights. But we find that delay, and submission to the imposition, only subject us to still greater injustice, and we have therefore determined to appeal to the courts for our rights. We do not seek to evade taxation, but only to secure equity and compliance with the law. To carry out this purpose, the board of directors, at it session on the 18th instant, adopted the following preamble and resolution, viz:

*Whereas*, We regard it very desirable to secure the adjudication of our higher courts, on the question of taxation, which we have

held to be unequal and unjust, as affecting the shareholders of our bank; and

*Whereas*, This board does not see the way clear to decide that it is warranted, on behalf of the bank, in incurring the risk and the expense of such adjudication; the tax being assessed against the shareholders personally, and not against the bank; and

*Whereas*, Chauncey P. Williams, one of our stockholders and our cashier, on his own personal behalf and at his own cost and risk, offers to conduct a suit, to secure such adjudication, for the benefit of all our shareholders, provided that such shareholders will assign to him all their rights and claims for taxes, heretofore levied and collected on their shares, without due authority of law; and

will pay to such shareholdars, one-half of all sums he may realize, if any, after paying the expenses of prosecuting such suit; therefore,

*Resolved*, That this board recommend to all the stockholders of this bank, that they accept the proposal of Mr. Williams, as here made, and co-operate with him in efforts to secure equity of taxation upon our bank property.

In accordance with the above, I enclose a blank assignment of your claim (should it prove that you have any), which I would thank you to execute in presence of a subscribing witness, and to return to me at your earliest convenience. It is desirable that all the stockholders act as a unit, as nearly as possible.

The chief object of the suit is to procure equity and compliance with the law for the future; but it is thought possible that something may be recovered of excessive payment in the past, that may, in whole or in part, meet the expenses of suit. If more is collected, one-half the excess will be paid to you; if less, you will not be subject to any charge to cover the deficiency.

Very respectfully,

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, *December* 22, 1874.

*To the Shareholders:*

The board of directors have, this morning, declared a semi-annual dividend of eight per cent, subject to the tax levied under State authority.

The assessment upon the shares of our bank has been regarded excessive, and is therefore believed to be in violation of law. The present assessment was brought before the Supreme Court by *certiorari* in October last, in the hope of getting it corrected. The court decided the assessment not in accordance with the law, but that it could not afford us relief through that proceeding. It is proposed to test its legality by suit, after payment. The shareholders are therefore requested not to volunteer the payment of their tax on shares, to the end that, when paid, they may be paid under proper protest, to reserve all their legal rights.

Very respectfully,

C. P. WILLIAMS, *Cashier.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, *December* 31, 1874.

*To the Shareholders:*

184 I inclose herewith my check, payable January 2, for dividend of eight per cent on the number of shares standing in your name, subject to the annual tax levied under State authority, which this year is *five per cent*, or about $4.50 per share, after deducting real estate, the tax on which is paid by the bank.

The directors believe that the tax is levied in violation of law, and that it ought to be brought to judicial decision to secure compliance with the law in the future. To this end, as we are advised by counsel, the payment of the tax should not be volunteered by the shareholders, but paid only on proper demand and under protest.

185 The board of directors therefore, on the twenty-ninth inst., adopted the following preamble and resolutions:

*Whereas*, The tax levied against the shareholders on their shares is believed to be excessive and therefore illegal; and

*Whereas*, It is deemed important that said tax, when paid, shall be accompanied by a proper protest, to reserve all legal rights of the shareholders; therefore,

*Resolved*, That, to relieve the shareholders from trouble and embarrassment in the payment of such tax, the cashier be and he is hereby authorized to receive from each shareholder the amount of his tax as claimed by the receiver of taxes, and give a receipt therefor, obligating the bank to pay such tax.

186 In accordance with the above resolution, I am prepared to receive from each shareholder the amount of his tax, with the same deduction for prepayment made by the tax receiver, viz., one per cent if paid before January fifteenth; one-half of one per cent before February first; and as soon as the tax can be properly demanded, I will see it paid, so as to discharge all claims against you on account of the tax, and with proper protest against its illegality. To shareholders at a distance, I would suggest the return to me of their dividend check, duly indorsed, and I will return the receipt, with draft on New York for the remainder.

Very respectfully,

C. P. WILLIAMS, *Cashier*.

NATIONAL ALBANY EXCHANGE BANK,
*May* 10, 1875.

*To . . . . . , a Stockholder:*

187 On the 21st August, 1874, we addressed you a circular, inviting the assignment of any claim you might have against the city and county of Albany, for taxes collected against your shares without due authority of law, for the purpose of securing the adjudication of the courts upon the right of the present exorbitant taxation of our bank shares. Nearly all the shareholders responded to that circular with the assignment requested. It was, however, after-

wards thought the wiser course, under advice of counsel, to delay proceedings by suit, until the assessment of your shares for 1874, could be taken by *certiorari* before the Supreme Court for review and correction. This was done, and the court at its session at Schenectady, in October last, heard the case. The decision was to the effect that
the assessment was in violation of law, but that the court
188 could not afford a remedy through that proceeding. It was then determined to have the tax of 1874 paid under protest, and base our action upon that tax. For that purpose I herewith inclose a blank assignment and request that you will execute the same and return it to me at your early convenience.

It is proposed to prosecute the suit on the plan recommended by the board of directors, in August last, viz.: That, as it must be prosecuted as an individual claim, the subscriber will bear the expense and take the risk of the prosecution. No expense or liability is to be incurred either by the bank or the shareholders. In case of success it is hoped that the sum recovered may, in whole or in part, reimburse
the expenses incurred. If more should be realized, one-half
189 the excess will be paid to you, the other half to be retained as compensation for the risk and care of the prosecution. The case will undoubtedly have to go to the United States Court, and will be attended with considerable expense. It is intended also to secure a decision on the question of the right of the shareholder to the offset of indebtedness against his bank shares, the same as against all other personal property.

The correction of the present excessive and grossly unequal taxation of our shares is clearly vital to our continued existence as a bank. To attempt to make headway against a five per cent tax, in addition to the heavy exactions of the United States government, is
hopeless. While in many of the States the taxation of banks
190 under State authority, is limited to a maximum of *one per cent*, the levy in our city, through the mischievous and fraudulent assessment of real estate at forty per cent of its value, and the escape altogether from the tax roll of nine-tenths of the personal property, is four or five times this rate. The injustice is so gross that it leaves us no recourse but resistance. Your co-operation in the manner herein proposed is respectfully requested, in the hope that the provisions of the law may be enforced and equity of taxation secured for the future.

Very respectfully.

191 NATIONAL ALBANY EXCHANGE BANK,
*December* 17, 1875.

*To the Shareholders:*

The stockholders of the bank are respectfully requested not to volunteer payment to the receiver of taxes of the tax levied upon their shares, but let the payment be made through the bank, as last year, in order to reserve their right of recovery, by paying under proper protest.

The suits instituted to test the legality of the tax of last year are in progress, but will take considerable time to reach a decision. We think there is every reason to hope for ultimate success.

The present tax is payable any time before fifteenth January, with one per cent discount. We will address you further on the
192 subject when sending out our January dividend.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 31*st December*, 1875.

*To the Shareholders:*

We inclose you check herewith for dividend, at the rate of six per cent, for the shares held by you, instead of eight, as for some years past at this period. Owing to general business depression our business the past year has been less remunerative than heretofore, and we have also suffered some losses.

The tax levied upon our shares this year is at the rate of $3.56, and will amount to about $3.20 per share, from which there will be a deduction of one per cent, if paid before fifteenth January.
193 In order that the payment may be made under proper protest, to reserve the right of recovery, as recommended in our circular of seventeenth inst., it is advised that the shareholders settle their tax through the bank, taking its receipt for the amount of the tax at the same rates as it would be taken at the time by the receiver of taxes, and as early as it can be done with legal protest; we will see the tax paid under protest.

To accomplish this, we would suggest that the dividend check herein inclosed be returned to us properly indorsed, when we will inclose receipt for tax and draft on New York for balance.

Very respectfully,

C. P. WILLIAMS,
*President.*

THEO. L. SCOTT,
*Cashier.*

194 NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 19*th December*, 1876.

The board of directors, at its session on the fifteenth instant, adopted the following resolution, viz.:

*Resolved*, That the cashier be and he is hereby authorized to receive from the shareholders the amount of their tax on shares in this bank, as claimed by the receiver of taxes, and give receipt therefor obligating the bank to pay the tax, to the end that its payment may be accompanied with a proper protest against its illegality.

In accordance with the above resolution the shareholders are invited to pay their share tax, as for the past two years, through the bank under protest, and thus reserve the right of recovery in

195 case the hoped-for result of our suit to test its legality should be realized. Its payment after the January dividend, and before the fifteenth January, will be in time to secure the discount of one per cent.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, N. Y., *December* 31, 1877.

*To the Shareholders:*

I inclose herewith check payable January second, for dividend of six per cent, subject to the tax on shares, which this year is
196 three and one-fifth per cent, or $2.88 per share, after deducting real estate, the tax on which is paid by the bank.

The suit instituted two years since to secure a judicial decision upon the right of the present burdensome taxation, is still undecided. We hope it may be brought to a determination during the coming year, and we see no reason to be less hopeful of the ultimate result than when it was commenced.

The board of directors, at its meeting December twenty-sixth, adopted the following resolution, viz.:

"*Resolved*, That the cashier be and he hereby is authorized to receive from the shareholders the amount of their tax on shares for the year 1877, as claimed by the receiver of taxes, and give
197 a receipt therefor, obligating the bank for the payment of the tax, with a view to its payment with a proper protest against its illegality, and that the shareholders be invited so to settle their share tax."

In accordance with this resolution the shareholders are invited to settle their share tax through the bank, under protest, as for several years past, and thus reserve the right of recovery in case the hoped-for result of our suit is realized. Its payment before the fifteenth of January secures the discount of one per cent on the amount of tax.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, *December* 31, 1878.

*To the Shareholders:*

I inclose herewith check payable, January second, for dividend of six per cent, subject to the tax on shares.

198 The board of directors, at its session on the twentieth inst., adopted the following resolution:

"*Resolved*, That the cashier be and he is hereby authorized to receive from each of the shareholders the amount of the tax assessed upon his or her shares in this bank as claimed by the receiver of taxes, and to give a receipt therefor obligating the bank to settle

and discharge such tax under protest or otherwise, so as to reserve the shareholders' right of recovery for illegal taxation."

You are therefore invited to settle your share tax through the bank under protest, as for several years past. The payment before the fifteenth January will secure the discount of one per cent on the amount of the tax.

199 Our tax suit is yet undecided. We hope to get it determined during the present winter.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 31*st December*, 1879.

*To the Shareholders:*

I inclose herewith check, payable January second, for dividend of six per cent, subject to the tax on shares.

We had hoped before this to have had the decision of the United States Court upon the question involved in our claim for illegal assessment and taxation; but we have as yet no decision, although the cause was argued in March last. The board of directors therefore invite the shareholders to settle the tax of this year under protest as heretofore, and for that purpose, on the twenty-sixth inst., adopted the following resolution, viz.:

"*Resolved*, That the cashier be and he is hereby authorized
200 to receive from each of the shareholders the amount of the tax assessed upon his or her shares in this bank as claimed by the receiver of taxes, and to give a receipt therefor, obligating the bank to settle and discharge such tax, under protest or otherwise, so as to reserve the shareholders' right of recovery for illegal assessment."

Payment of the amount before the fifteenth January will secure the discount of one per cent on the amount of tax.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 25*th March*, 1880.

*To the Shareholders:*

The decision of the Supreme Court of the United States in
201 the two suits brought by the subscriber against the assessors of the city of Albany, to secure a legal adjudication of the right of the oppressive taxes assessed against himself and other shareholders of the bank, has resulted in the overthrow of the statute of our State under which the taxes were assessed; but without further litigation does not restore us the money illegally taken. It is believed that our claim is good to recover the money, and with your co-operation it is proposed to prosecute for its recovery.

I inclose a blank assignment of your claims, as the former assignment taken does not include the tax of the past several years, and also a paper giving your assent to the resisting the payment of the tax of 1879, instead of settling it under protest, as originally
202 proposed and agreed. This paper, too, sets out in specific terms the original arrangement recommended by the board of directors as between the shareholders and the subscriber.

I invite your signature to these two papers and their return to me in the inclosed envelope, in the hope that I may yet be enabled to return you some considerable portion of the excessive and unjust tax levy of the past six years.

I take pleasure in expressing the confidence that the results already secured must afford us guaranty from excessive and unjust taxation for the furure.

Very respectfully,

C. P. WILLIAMS.

For valne received, I hereby assign to Chauncey P. Wil-
203 liams all my claim against the city and county of Albany, for, or on account of taxes assessed and collected against, or upon my shares of stock in the National Albany Exchange Bank, without due authority of law; and I hereby authorize and empower said Williams to enforce collection of such claim at his own proper costs and charges; and full acquittance to give therefor as fully as I myself might do, if these presents had not been executed.

Witness my hand and seal this.....day of.....1880.

[L. S.] .....

*Whereas*, I, ....., a shareholder in the National Albany Exchange Bank, did pay in to said bank the sum
204 of $....., being the amount claimed by the receiver of taxes of the city of Albany as being the sum due for the tax of 1879 on.....shares of stock in said bank held by me, and for which sum said bank has executed to me its receipt obligating it to settle said tax under due protest; and

*Whereas*, Chauncey P. Williams has on his own behalf and in behalf of other shareholders of said bank, with the concurrence and approval of the board of directors thereof, for some years conducted suits against the assessors of the city of Albany, to test the legality of the taxes assessed against the shareholders of said bank; incurring therein large costs and expenses upon his own individual account; and

*Whereas*, The Supreme Court of the United States has
205 recently, and before the settlement by said bank of the tax before referred to, rendered decisions in such suits which are believed in effect to declare said tax void and without lawful authority;

Now, therefore, for value received, I do hereby agree with said Chauncey P. Williams that he may resist the payment of such tax, instead of said bank settling the same under protest as stated, and I do hereby authorize said bank in case of his successful resistance of such tax, to pay over to said Williams said sum of money so

paid in by me as aforesaid for the settlement of my share tax of 1879, and the said sum may be used by him to pay the costs and expenses of resisting such tax and to pay the costs and expenses of such other suits hereinbefore referred to, or of such further and other suits to be brought by him as may be necessary to secure my
206 rights in this regard; and I do hereby further assent and agree that said bank may, in its own discretion, if the board of directors thereof so think proper to do, before the final determination of the legality of such tax, pay to said Williams the sum so paid in as aforesaid to settle such tax, on said Williams giving to said bank his bond to indemnify it and me against the payment of such tax, and all costs and expenses thereon.

It is understood, however, and this agreement is upon the express condition that no claim for costs and expenses of any such suits, or of resisting said tax of 1879, shall be made against me; but that in case of recovery of any sum which together with the amount of the tax of 1879, before referred to as paid in by me, and the total of
207 such sums paid in by other shareholders shall exceed the total costs and expenses of such litigation, one-half of my ratable share of such excess shall be paid over to me by said Williams when so recovered, the other half to be retained by said Williams.

Witness my hand and seal this .... }
day of ....., 1880. }
[L. S.] .....

208 NATIONAL ALBANY EXCHANGE BANK, }
ALBANY, *September* 8, 1880. }

*To the Shareholders:*

The Supreme Court of the United States, in the case of Williams vs. Weaver, in March last decided that owners of shares in National banks must be allowed the same offset for debts that is allowed to owners of all other personal property in the assessment of taxes. This decision renders void the former law of the State, under which bank shares were assessed and taxed, so far as regards shares of National banks. The Legislature however re-enacted, in substance, the provisions of the former law by act, 26th June, 1880, which is construed to subject the shares of banks to a separate taxation from the owners' other personal property; and your shares are now being assessed under this act. The assessment, however, is liable to
209 reduction of the just debts of the owner; but the assessors claim it their duty to allow the offset only when affidavit to that effect is presented them. The subject should receive the immediate attention of every shareholder who is entitled to the exemption.

In every such case of shareholders, resident out of our city, who will transmit to us his affidavit of indebtedness entitling him to the offset, we will present for him the claim and have it allowed. For this purpose I inclose a blank affidavit. Each shareholder must determine for himself (or herself), whether he is in condition to make the required oath.

The subject of the tax on shares will be hereafter referred to each shareholder to adjust for himself, as a personal tax on his
210 individual account. The bank will decline settling the tax for the shareholders, as it cannot determine their several rights in the matter.

Very respectfully,

C. P. WILLIAMS,
*President.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 31*st December*, 1880.

*To ....., a shareholder:*

The Board of Directors of this bank have declared a semi-annual dividend for the second half of the year of six per cent, payable to shareholders on January third.

The litigation to test the right of the taxation levied upon their shares, which has been carried on for the past six years on
211 behalf of the shareholders, has resulted in our favor so far as regards the principles of law involved; but no final decision has yet been reached upon our suit for the recovery of the money illegally collected for taxes heretofore levied without lawful authority. By decision of the Supreme Court of the United States, in March last, the State law of 1866, under which the taxes up to that time had been assessed, was declared in conflict with the law of Congress and void. Not content with the overthrow of this second statute of the State, which sought to subject the shares of banks to disproportionate and unlawful taxation, the Legislature of 1880 re-enacted in a new statute most of the obnoxious features of the law of 1866, just declared void. Under this new act our shares are still taxed
212 disproportionately, unjustly and exorbitantly: the tax this year being about three dollars and twenty-four cents on each share, in addition to about an equal sum in State and United States taxes paid directly by the bank. Feeling satisfied of the exorbitant and illegal nature of this tax, the Board of directors on the twenty-first inst. adopted the following resolution, namely:

"*Resolved*, That the president and cashier be and they are hereby authorized to take measures to restrain the collection of the tax on shares of this bank for 1880, in excess of what is believed to be the ratable legal tax thereon, compared with other moneyed capital."

The State law of twenty-sixth June last has the following provision, viz.:

"SECTION 6. For the purpose of collecting the taxes to be
213 assessed under sections three, four and five of this act * * * it shall be the duty of every such bank * * * and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed, in pursuance of sections three, four and five of this act, until it shall be made to appear to such officer or officers that such taxes have been paid."

Under this provision of the law it is proposed to retain from the dividend a sufficient sum to pay the taxes of all shareholders subject to the tax; then to tender such sum as can be shown to be their just, equitable and legal rate of tax; and to invoke the courts to restrain the collection of the excess.

Your dividend on ——— shares is..... $.....
214 The tax is..... .....

Leaving net dividend for which we inclose check ..... $.....

Should the courts sustain our views any residuum of the dividend reserved will be hereafter paid over to the shareholders.

Very respectfully,
C. P. WILLIAMS,
*President.*

THEO. L. SCOTT,
*Cashier.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, 31st *December*, 1881.

*To the Shareholders:*

The board of directors have declared the usual semi-annual
215 dividend of six per cent, subject to the tax on shares, payable January third, check for which is herewith inclosed.

The litigation commenced in 1874, to test the right of the then existing methods of taxation of shares, was prolonged by delays in the carrying it through the several State and United States courts until March, 1880, when a decision was rendered in the Supreme Court of the United States (The People ex rel. Williams v. Weaver, 100 U. S., 539) in our favor as concerns the principles involved; declaring in effect that the restriction of the act of Congress, that the taxation of shares shall be "not at a greater rate" than is imposed upon other moneyed capital in the hands of individuals, "has reference to the entire processes of assessment," and not simply
216 to the rate or arithmetical ratio of the tax. This decision in effect declares the act of our State Legislature of 1866, under which the bank shares were taxed until its rendition, "void as to the shares of national banks."

A suit was then brought in the United States Circuit Court for the Northern district of New York to recover the sums illegally collected and paid under protest, which resulted in a judgment in our favor for the amount of the taxes so paid and interest. This judgment is now before the United States Supreme Court, on appeal, for its final decision thereon.

Application was also made to the United States Circuit Court to restrain the collection of the tax of 1879–80 on the same
217 grounds as those involved in the previous case. An injunction was granted, which, on a later hearing of proofs and argument, was made perpetual. This judgment is also before the

United States Supreme Court on appeal, both this and the former suit being appealed by the county, against which both are rendered. It is hoped that both may receive the final decision of the court during the coming year.

The Legislature at its session of 1880, after the decision of the Supreme Court in Williams v. Weaver, enacted a new statute taxing bank shares. (Act of 26th June, 1880.) This new act is obnoxious to the charge that it violates the fundamental condition on which Congress yields its assent to State taxation of the shares,
218 namely: That they may be "included in the valuation of the personal property of the owner," in assessing taxes imposed by State authority; but "the taxation shall not be at a greater rate" than is assessed upon other moneyed capital in the hands of individual citizens.

Now there was no necessity for a special law for taxing bank shares, except simply to declare them liable to taxation the same as other personal property, through existing methods. The fact that the State insists on subjecting them to a special method of taxation is itself sufficient proof of a purpose to subject them to a greater burden of tax. And when we find, as we do find, to the cost of every shareholder, that the system adopted by the State does
219 result in subjecting the shares to a much greater burden of tax than the average of other taxable moneyed capital, it is, in our view, sufficient ground to warrant resistance to it.

Under this new act, the tax assessed upon our shares for the year 1880–81 was deemed by the directors excessive, and application was made to the United States Circuit Court to restrain the collection of fifty-eight per cent of such tax, after the tender and payment of forty-two per cent thereof, which was regarded as the full equivalent of a legal tax. The court granted the injunction, and proofs and argument in the case have been heard on the motion to declare the injunction perpetual, and a decision of this case is now awaited, which decision will be final.

220 This brings us to the tax of the present year, 1881–2, which, through methods claimed by the assessors to be more in conformity with the statute in making their assessments, is somewhat less than formerly; although it is yet, as we believe, in violation of the congressional restriction in its subjecting the shares of our own, as of all banks, to a greater rate of tax than other property, and is therefore illegal.

The board of directors, not deeming it wise to institute further suits until the final decisions upon those now pending, nevertheless regard it important that the shareholders should take measures to secure their rights in case the act of 1880, and a further act in 1881, to the same end, shall hereafter be declared invalid. They
221 have therefore adopted the following resolutions, viz.:

"*Resolved*, That the shareholders be and hereby are advised to pay their tax upon shares under protest, in such a manner as to preserve their rights in the event of the present law taxing shares being declared invalid."

"*Resolved*, That the president be and he is hereby authorized to receive from each shareholder a sum equivalent to the amount assessed on his or her shares, with a view to the discharge of such share tax under due protest to reserve all rights of the shareholders, executing a receipt of the bank therefor."

Under the resolution of authority here presented, I offer, on the part of the bank, to receive from the shareholders the amount
222 of the tax (which is about $2.59 per share), and will attend to discharging the tax when it can be legally done under proper protest to secure their rights. The shareholders are therefore invited to settle their share tax in this manner through the bank.

Very respectfully,

C. P. WILLIAMS,
*President.*

J. H. BROOKS,
*Cashier.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, *1st March*, 1882.

To ....., *a Shareholder:*

As will be remembered by reference to our circular of 31st December, 1880, it was decided to resist the payment of a portion of the tax of that year, as in excess of what was just and legal. It was accordingly decided to make a tender of forty-two per cent of the tax levied upon the shares, and appeal to the courts to restrain the collection of the remainder. The United States Circuit Court, on our application, issued its injunction restraining the collection of the fifty-eight per cent, which injunction, by a recent decision, it has made perpetual.

This is the first fruits of our litigation in resistance of unjust
223 taxation, which we have been able to hand over in tangible form to the shareholders, although it was the last action begun in the courts. We are not without some confidence that it may be followed by still more substantial results.

The inclosed check of $..... is for the amount of the fifty-eight per cent of tax on your ..... shares, after paying your proportion of the costs of suit.

Very respectfully,

C. P. WILLIAMS,
*President.*

J. H. BROOKS,
*Cashier.*

NATIONAL ALBANY EXCHANGE BANK,
ALBANY, *30th Dec.*, 1882.

*To the Shareholders:*

The board of directors have declared the customary semi-
224 annual dividend for the second half year of six per cent, subject to the tax on shares; check for which we herein inclose.

The claim for recovery of taxes collected without lawful authority, is still undetermined, although the United States Supreme Court has

decided against us the point of our strongest reliance—namely, the invalidity of the state law of 1866. In the language of Justice Bradley of that court, who dissents from its judgment, this "is practically to render the condition of the Act of Congress nugatory, and to deprive the national banks and their stockholders of its protection." We can, however, do no other than bow to the decision, and as it leaves us no further present hope of establishing as a legal requirement, the assessment and taxation of bank shares by the same
225 methods and at the same rates as other moneyed capital, there seems no further object in paying the taxes under protest. We therefore refer the share tax to the stockholders to be settled by them with the receiver of taxes. We will, however, give the subject attention for non-resident shareholders whenever so requested.

Very respectfully,

C. P. WILLIAMS,
*President.*

JONAS H. BROOKS,
*Cashier.*

Q. After the decision of the mandamus proceedings by the
226 Supreme Court of the United States, you issued circulars to your shareholders announcing that decision? A. I think so; I am not quite sure; if so it is here.

Q. And then prior to the commencement of this action of Stanley against the Board of Supervisors, you issued the circulars which you here produce with the blank agreement and blank assignment attached? A. Yes, sir; after the decision in 1880, of the Supreme Court of the United States; I think this is the one and the only one I issued in regard to that.

Q. The shareholders who assigned to you the causes of action set up in this complaint, all signed this blank agreement, or an agreement of which a copy is attached to your circular of March,
227 1880, did they not? A. I believe they all did; I am not quite sure all did; with perhaps a few exceptions of a few shareholders, who owned a few shares, who had inadvertently paid their tax, did not sign those papers.

Q. Those who signed the assignment signed the agreement also? A. I think they did in all cases.

Q. You never paid any cash to any of these shareholders for their assignments? A. No, sir.

Q. The only consideration then for assignment to you by these shareholders was contained in the agreement signed by them?

Mr. HALE.—All the evidence inquiring into the consideration of the assignments, or any of them, is objected to as immaterial
228 and incompetent.

A. That was so; no money was paid.

Q. And of course you were aware of the fact that in a large number of instances the alleged claim or causes of action owned by these different assignors against the county did not amount to $500? You knew what the amounts were in each case? A. Yes, sir.

Q. Having obtained the assignments of these various shareholders

to yourself, you subsequently assigned the whole interest to Mr. Stanley? A. Yes, sir.

Q. Is Mr. Stanley any relative of yours? A. Yes, sir; he is a nephew of mine, or rather a nephew of my wife.

Q. Where does he live? A. Chicago.

229 Q. Where did he live at the time of the assignment? A. At Chicago.

Q. How long had he lived there? A. Most of his life; twenty years or more.

Q. What business was he engaged in, if any? A. In the wholesale fruit business.

Q. Was he a stockholder in your bank? A. No, sir.

Q. What was the consideration of the assignment by you

230 to him?

[Objected to as immaterial and incompetent, and that the assignment itself is the best evidence, and can't be inquired into.]

A. There was no money consideration then; no money paid.

Q. Well, what other consideration was there? A. The engagement or arrangement that the suit was to be tried in his name, and that he would see to prosecuting the suit.

Q. Was that all the arrangement? A. I don't think the arrangement beyond that was very definite.

Q. Was there any talked of? A. I think that it included the understanding; it was all done by correspondence, and I had no personal interview with him; that he should be subject to no expense in

231 the matter; that he should be relieved of any cost; as to anything further I don't think there was any definite agreement.

Q. Was there not an understanding that after the determination of the suit, in case he collected any money that it should be paid over or returned to you? A. Never any word said about it between us.

Q. Did you have any such understanding? A. No, sir.

Q. By correspondence or anything of that kind? A. No, sir.

Q. Did you yourself expect that such would be the fact?

[Objected to as immaterial and incompetent.]

A. Well, yes; but there was nothing said about it at all in

232 any way, to my best recollection.

Q. But as matter of fact you expected, in case a recovery was had, that the money would be returned to you? A. I expected there would be some accounting; there was an expectation, but not an understanding.

Q. An expectation indulged in by you from the whole circumstances of the case under which the assignment was made, and his lack of interest pecuniarily in the controversy, I suppose? A. Well, yes, the lack of pecuniary interest.

Q. Based on those circumstances and your relations to each other you entertained that expectation? A. Yes, sir.

Q. Why did you make that assignment to him?

233 [Objected to.]

A. I was advised by my counsel to do so that the matter might stand in a better position.

Q. What do you mean by that; that the case would stand better with the plaintiff, who was a non-resident of the State of New York? A. Yes, that was my understanding of it; I don't know as it was the correct one.

Q. You made it for the purpose of having a non-resident of the State of New York, plaintiff in the action? A. I did it chiefly through Mr. Hale's advice, and upon a question with which I was not myself cognizant; that was my understanding of it.

234 Q. You mean by its being your understanding that the assignment was made for the purpose of having a non-resident of the State of New York plaintiff in the case? A. Yes, that was my understanding.

Q. Since the assignment was made who has paid the expenses of the litigation?

[Objected to as immaterial.]

A. Such expenses as I know to have been paid I think I have paid myself; that is to say, I have furnished the money.

Q. You don't know of "any other fellow" who has been paying them, do you? A. No, sir, I don't.

Q. Such expenses as have been paid to counsel, have been paid by you? A. Yes, sir.

235 Q. Did you retain Mr. Edmunds to argue the case for you in the Supreme Court of United States? A. Yes, to argue the case for the plaintiff.

Q. Did you retain him after conference with the plaintiff in regard to who should be retained? A. I think I did, he having commissioned me to act for him, it was my own judgment.

Q. You paid Mr. Edmunds? A. Yes, sir.

Q. Without consulting Mr. Stanley in regard to the amount? A. I didn't call on him for the money; yes, I paid without consultation with him.

Q. In all these matters in regard to which you have given testimony, Mr. Hale has been your counsel, has he not? A. Yes,

236 sir.

Q. And he has continued as counsel after Mr. Stanley took an interest in the case under that assignment? A. I think Mr. Stanley employed him as counsel; I so understood.

Q. On your recommendation and request? A. I couldn't say as to that; it is very possible, however.

Q. Don't you think it was at your suggestion that Mr. Stanley employed Mr. Hale in this matter? A. It is merely from my recollection; if I had opportunity to consult my letter I could tell positively; I think that is probable; I don't remember corresponding with Mr. Stanley upon that point.

237 Q. Then it was either that you corresponded with him upon the point or else that Mr. Hale, your counsel, corresponded with Mr. Stanley in relation to this assignment, and in relation to sending it back and retaining Mr. Hale for the commencing of this action? A. Yes, I think so.

BANKS.

| | |
|---|---|
| Mechanics and Farmers' personal | $280,000 00 |
| Union National | 225,000 00 |
| National Albany Exchange | 269,550 00 |
| Merchants' National | 160,000 00 |
| First National | 270,000 00 |
| Albany City National | 270,000 00 |
| New York State National | 322,000 00 |
| Albany County | 200,000 00 |
| National Commercial | 450,000 00 |
| | $2,446,550 00 |

And in the year 1875, such aggregate total assessment was as follows:

SIXTH WARD, 1875.

| | |
|---|---|
| Total assessment, real estate | $7,062,842 00 |
| Personal | 2,613,050 00 |
| 246 | $9,675,892 00 |

BANKS.

| | |
|---|---|
| Mechanics and Farmers', personal | $280,000 00 |
| Union National | 225,000 00 |
| National Albany Exchange | 269,550 00 |
| Merchants' National | 160,000 00 |
| First National | 270,000 00 |
| Albany City National | 270,000 00 |
| New York State National | 315,000 00 |
| Albany County | 200,000 00 |
| National Commercial | 270,000 00 |
| 247 | $2,259,550 00 |

And that the amounts deducted for the assessed value of the real estate of said banks for each of said years were as follows:

| | |
|---|---|
| Mechanics and Farmers' Bank | $70,000 00 |
| Union National Bank | 25,000 00 |
| National Albany Exchange Bank | 30,450 00 |
| Merchants' National Bank | 40,000 00 |
| First National Bank | 30,000 00 |
| Albany City National Bank in 1873 | 25,000 00 |
| Albany City National Bank in 1874 and 1875 | 30,000 00 |
| N. Y. State National Bank in 1873 and 1874 | 28,000 00 |
| N. Y. State National Bank in 1875 | 35,000 00 |
| National Commercial Bank in 1873 and 1874 | 50,000 00 |
| National Commercial Bank in 1875 | 30,000 00 |

It was also proved that the rule acted upon by the assessors
248 during said years in assessing real estate, was to assess it from forty to sixty per cent of its actual value.

WILLIAM J. WEAVER was examined as a witness on the part of plaintiff on said trial and, among other things, testified that he was an assessor of the city of Albany, and had been since the year 1871; that during that period the assessors of said city had assessed bank stock at its par value, making the requisite deductions for the assessed value of the real estate of the bank, without reference to the actual value of such stock, except to ascertain that it was worth as much as par. He also testified that the shareholders in banks generally in said city, except those of the National Albany Exchange Bank, were satisfied with this mode of assessing bank stock. He also testified upon his cross-examination that during said years the assess-
249 ment made upon the stockholders of said National Albany Exchange Bank were not made intentionally at a greater rate than that upon other moneyed capital in the hands of individual citizens. He also testified that there was no rule prescribed by any body that he knew of, or followed by the assessors, intentionally making the assessment upon shareholders in National banks at a greater rate than upon other moneyed capital in the hands of individual citizens. In making assessments upon bank shares there was no intention to discriminate against the holders of that kind of property for the purpose of taxation. In the system of valuation adopted by the assessors, there was no intention on their part to have the same operate unequally or unjustly towards the holders of bank stock. The assessments were made and the assessors acted in good faith.

Upon his redirect-examination he said that they intended
250 to assess all bank shares at par, as they did assess them, and that they intended to assess a share of the National Albany Exchange Bank at the same amount as they did that of a share in the Mechanics and Farmers' Bank, and at the same amount that they did a share of the National Commercial Bank and the National State Bank, although he had reason to believe that the value of the shares in the Mechanics and Farmers' Bank was much greater than the value of the shares in the National Albany Exchange Bank.

The plaintiff gave in evidence a return of the assessors of the city of Albany to a writ of *certiorari* issued out of the Supreme Court of the State of New York in the year 1874, of which return the following is a copy:

*To the Honorable the Justices of the Supreme Court of the State of New York, at a General Term thereof, now held at the court house in the city of Schenectady, on the second Tuesday of November*, 1874:

The answer or return of William J. Weaver, Edward Bren-
251 nan and Robert H. Weir, composing and being the Board of Assessors of the city of Albany, to the writ of *certiorari*

issued out of this court and duly served upon them, which writ is hereto annexed, is as follows:

By virtue of and in obedience to the annexed writ of *certiorari* to us directed, we do hereby certify and return to the aforesaid justices of the Supreme Court the assessment of the aforesaid Chauncey P. Williams and other shareholders of the National Albany Exchange Bank, and also the assessment of the shareholders of the Mechanics and Farmers' Bank, a bank organized under the laws of the State of New York, upon the shares of the stock of said last named bank held by them, together with so much of the assessment roll of
252 the Sixth ward of the city of Albany as affects the assessment of the said Williams and others, shareholders in the said National Albany Exchange Bank, upon the shares held by them, and also all entries by them, or either of them, made of such assessments, and all proceedings, notices, communications, letters or papers relating to such assessment received by, acted upon or taken into consideration by them or any or either of them. All of which is hereto annexed and marked schedule A, and forms a part of this our return. That neither this board nor any individual member thereof has or had any information in relation to the actual value or market value of the shares of said banks respectively, other than the mere statement of Mr. Chauncey P. Williams, that the shares of
253 the National Albany Exchange Bank were of less value than those of the Mechanics and Farmers' Bank; and as to the proportion existing between such bank stock, the only knowledge or information possessed by the board consisted in the statement made by Mr. C. P. Williams, the relator, to the board, after the first day of September, 1874, and before the issuing of this writ hereto annexed, and said Williams then stated to this board that the value of one share of the stock of said National Albany Exchange Bank did not exceed about forty-one per cent of the value of a share of the stock of the Mechanics and Farmers' Bank, and demanded that the assessment of the shares of said National Albany Exchange Bank be reduced to forty-one per cent of the assessment of
254 the shares of the said Mechanics and Farmers' Bank, which reduction this board refused to make.

That this board did not make any inquiries or investigation as to the actual or market value of the shares of the stock of said banks (further than to satisfy themselves that such value was more than their par value), and they investigated then to ascertain the par value of such shares, and this board decided to and did adopt the nominal or par value of said shares of stock as the standard of value in assessing the shareholders on said shares of stock. This board did not consider or examine the reports or statements of the condition of said banks respectively, published pursuant to law in a public newspaper in the city of Albany, in making their valuation
255 of the shares of said stock. And this board is informed and believes that the following are correct copies of the last reports or statements published by the officers of said banks respectively, prior to the first day of September last, in a public newspaper

in said city. The copies are hereto annexed and marked, respectively, E and F, and are to be taken as and to form a part of this return. That the assessment of the shares of the said National Albany Exchange Bank was not, and is not, at a greater rate, reference being had to the actual value and the market value thereof, than the said assessment of the shares of the said Mechanics and Farmers' Bank, but that the rate is exactly the same. That this board has no evidence before it as to the rate of assessment imposed upon shares of banks organized under the laws of this state other than that such rate is the same as that imposed upon the shares of banks organized under the laws of the United States, the assess-
256 ment in both cases being upon such bank shares at their par value, which as the board believes is in no case as much as their actual value. That Chauncey P. Williams is assessed as a resident of the Fourteenth ward of said city of Albany, and is assessed for personal property therein.

That hereto annexed and marked respectively B, C and D, and forming part of this return, are certain letters of Mr. C. P. Williams, addressed to the board of assessors of the city of Albany, and dated respectively September 19, 1872, September 4, 1873, and August 31, 1874, which are all that have been received or taken into consideration by such board in relation to the actual or market value of such aforesaid shares.

That the assessment upon the shareholders of bank stock in
257 the two banks aforesaid, is made upon the nominal or par value of said shares, deducting from said nominal or par value, such sum as is in the same proportion to such nominal or par value as is such assessed valuation of said real estate. And the same rule is followed in the assessment of all bank shares throughout the city. It is supposed generally that the shares of the Mechanics and Farmers' Bank are of greater value than those of the National Albany Exchange Bank, but the only knowledge of the board of assessors upon that point is the general belief in the city that the shares of the one bank are more valuable than those of the other.

All of which we do hereby certify and return as within we are commanded. In testimony whereof we have hereunto set our
258 hands and seals this 10th day of November, 1874.

WM. J. WEAVER,
EDWARD RRENNAN,
R. H. WEIR,
*Board of Assessors of the City of Albany.*

---

"A."

STOCKHOLDERS IN NATIONAL ALBANY EXCHANGE BANK.

| Name of party assessed. | No. of shares. | Par value deducting value of real estate. |
|---|---|---|
| C. P. Williams | 405 | $36,450 |
| J. B. Williams | 50 | 4,500 |

And all the other stockholders in the bank in the same way
259 upon the par value of their shares, deducting in proportion, etc., for real estate held by the bank.

STOCKHOLDERS IN MECHANICS AND FARMERS' BANK.

| Name. | Shares. | Deducting real estate, etc., value. |
|---|---|---|
| Thomas W. Olcott | 700 | $56,000 |
| E. Robinson | 9 | 720 |

And all the other stockholders in the bank in the same way upon the par value of their shares, deducting in proportion, etc., for real estate held by bank.

260 "B."

ALBANY, 19*th September*, 1872.

*To the Assessors of the City of Albany:*

GENTS.—I inclose a list of our shareholders. I have not made the extension, for the reason that we shall claim that our shares be placed upon the tax roll at a valuation somewhat nearer than heretofore the assessed valuation of other property. We find, too, that bank shares in other portions of the State are assessed from thirty to seventy-five per cent of their par, while here we have been paying taxes on full valuation. We claim, therefore, that the assessors place
our shares on the tax list at a valuation not greater than that
261 for other personal property. When that is fixed upon we will make the extension, if you wish.

I inclose a pamphlet on the subject of assessment of corporate property.

Very truly yours,

C. P. WILLIAMS.

"C."

*To the Assessors:*

I have made, in accordance with your request, and herewith furnish, a list of shareholders of this bank, and have extended the valuation of each share at ninety dollars as requested. But I hereby especially protest against the shares being included in the assessment
roll at this valuation, unless other bank stocks, and other
262 property, generally, shall be assessed at corresponding values in proportion to *real value*.

Please understand our compliance with your request as in no manner expressing or implying assent to the same.

Very respectfully yours,

C. P. WILLIAMS.

ALBANY, *September* 4, 1873.

"D."

ALBANY, *August* 31, 1874.

Messrs. EDWARD BRENNAN, WILLIAM J. WEAVER, R. H. WEIR, *Assessors:*

GENTLEMEN.—Our president, Mr. William Gould, has this morning handed me your note to him of eighteenth instant, which,
263 on account of his absence from the city he has failed to receive earlier. You refer to a call made by you at the bank, twelfth June, for a statement. At that date I was myself out of town, and, although after my return I was informed of your call and request for a statement, not knowing what statement the law called upon us to furnish, I conclude to wait, expecting probably a further call, when you might enlighten me.

The law, as I understand it, requires us to keep, at all times, in the office where its business is transacted, "a full and correct list of the names and residences of all the stockholders of the bank, and the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes
264 during the business hours of each day in which business may be legally transacted."

We know of no other statement to be legally required of us than this, and this has been and still is and will continue to be ready for your inspection whenever you may desire to examine it. Should you wish anything beyond this, on your showing us legal authority therefor, we shall cheerfully comply, or if we can do you any favor proper for us to grant, we shall be happy to do so when requested *as such.*

But is it not well for us on each side to have an understanding as to just what each has a *legal right* to demand of the other.

I have no doubt it is your aim to act only within your
265 lawful authority, as it is ours to comply with every lawful requirement. Will you not, therefore, have the kindness to inform yourself just what, in the particular under discussion, you have *a right to demand?*

I have aimed to say what is here written in all courtesy, with no desire to be difficult, or to place any obstacle in the way of your discharge of your duty, but in the hope of promoting a better understanding.

Very respectfully yours,

C. P. WILLIAMS,
*Cashier.*

The said Weaver also testified, on said trial, that he
266 did not know of any moneyed capital which was assessed as such during said years, in the said Sixth ward, except bank stock, State and National. That when they assessed individuals for personal property, it included everything, and they could not say whether it was moneyed capital or what kind of personal property it was. That in making their assessment the assessors assessed all the personal property that they knew of as being assessable, and which

they supposed the owner, if assessed, could not swear off. That there was no intention on the part of the assessors, with full knowledge of the taxable property of an individual, to assess said property below its value or to fail to assess an individual owner for his personal property which they supposed to be assessable. That as
267 between the different kinds of personal property, the assessors undertook to make no distinction as between moneyed and other personal property, but assessed for all the personal property that they knew of which was assessable. That he had not the least idea that they did in fact assess all the moneyed capital in the Sixth ward during the years in question; one reason for this was that people swore off their assessments, and another reason was that there was no way provided by law by which the assessors could ascertain the exact or the approximate amount of taxable personal property which citizens had, unless it was bank stock, that there was no species of personal property except bank stock, as to which, so far as he knew, there was a way provided or a mode exercised by the assessors to get at the precise truth about it, except that there was a law requir-
268 ing corporations to make statements; that if a person assessed made an affidavit of his indebtedness and the amount he was assessable for, that affidavit was conclusive, and that the assessors had no means of making an individual citizen make return of his property to the assessors; that, under the circumstances, the assessors did the best they could to assess what personal property they could find that was assessable.

The above mentioned testimony of the witness Weaver was not contradicted.

Upon said trial the plaintiff offered to prove that there was no certificate connected to the assessment roll of the Sixth ward for the years 1874 and 1875, and that the only oath annexed thereto
269 or written thereon in the years 1874 and 1875, was one of which the following is a copy:

We the undersigned do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the Sixth ward of the city of Albany, according to our best information, and that with the exception of those cases in which the value of such real estate has been changed by reason of proof produced before us, we have estimated the value of any such real estate at the sums which a majority of the assessors have decided to be a fair relative value thereof; and also that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and
270 above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, as the full and true value thereof, according to our best judgment and belief.

(Signed) EDWARD BRENNAN,
WM. J. WEAVER,
R. H. WEIR,
*Assessors.*

Subscribed and sworn, etc.

Plaintiff also offered to prove the law of the State of New York requiring an oath or certificate to be annexed to said assessment roll substantially differing from the oath which in fact was taken
271 and annexed. The said evidence relating to such oath was offered for the purpose of showing that there was no valid assessment of any property, real or personal, in said Sixth ward in said years 1874 and 1875, and that therefore the assessment imposed upon, and the taxes collected from, the stockholders of said National Albany Exchange Bank, were at a greater rate than was imposed upon other moneyed capital in said years.

This evidence was objected to by defendant's counsel as not within the issue presented by the pleadings, under the stipulation of the plaintiff's attorneys, and which stipulation bears date October 17, 1882, and is hereto annexed, marked stipulation No. 2, and such objection was sustained and the evidence thus offered excluded,
272 to which ruling of the court the plaintiff's counsel duly excepted.

And afterwards the said court rendered its decision in such action, of which the following is a copy:

"This action having been tried before the court without a jury, a jury trial having been waived by a consent in writing signed by the respective parties herein, and the proofs and allegations of the respective parties having been heard and considered, I, Alfred C. Coxe, district judge for the said northern district of New York, holding the term of said Circuit Court at which such action was tried, do hereby find the following facts and conclusions of law:

"*First.* That the allegation in the amended complaint in regard to the citizenship of the plaintiff, the citizenship and powers and liabilities of the defendant, the organization and capital of the National Albany Exchange Bank, the ownership of the shares of the
273 capital stock of the National Albany Exchange Bank, the assessment of the stockholders in said bank named in said complaint by the board of assessors of the city of Albany, the names and residences of said stockholders, the collection of taxes from said stockholders, and the payment of the same to the county treasurer of the county of Albany, and the demand made by Chauncey P. Williams before the commencement of this action of the treasurer of the county of Albany, are true as therein set forth.

"*Second.* That the allegations in the fourth count of said amended complaint, as to the presentation to the said board of assessors by said Chauncey P. Williams of the affidavit of his indebtedness, and the request by him for a reduction of his assessment on his
274 bank stock, and the refusal of the said board of assessors to make such reduction, and the application by the said Williams to the Supreme Court of the State of New York for a writ of mandamus, and the subsequent legal proceedings thereon, including the decision of the Supreme Court of the United States are true as set forth in said fourth count.

"*Third.* That the amount collected from the said Chauncey P. Williams and paid to the treasurer of the county of Albany, on the

29th day of May, 1876, was $1,409,33, as alleged in said fourth count.

"*Fourth.* That the plaintiff has failed to establish the allegations in said complaint that the several assessments therein referred to
275 were at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of this State.

"Also, I find as a conclusion of law:

"I. That the plaintiff is entitled to recover upon the fourth count of the amended complaint.

"II. That the plaintiff is not entitled to recover upon any other count of said amended complaint.

"III. That the plaintiff is entitled to judgment against the defendant for the sum of fourteen hundred and nine dollars and thirty-three cents ($1,409.33), with interest from the 29th day of May, 1876, amounting at the date hereof to the sum of six hundred and twenty-five dollars and ninety seven cents ($625.97), and amounting
276 in the whole to the sum of two thousand and thirty-five dollars and thirty cents ($2,035.30), together with the costs of the action accruing subsequent to the order of discontinuance of some of the counts herein, which order was granted on the 9th day of January, 1882."

"Dated *March* 20, 1883.

"(Signed) ALFRED C. COXE."

Before the said decision was rendered, the attorneys for the plaintiff, pursuant to the practice of the courts of the State of New York, submitted a statement in writing of the facts which the plaintiff deemed established by the evidence, and of the rulings upon questions of law, which he desired the court to make, and the court, pursuant to such practice, noted in the margin of the statement so submitted the manner in which each proposition was disposed
277 of. The following is a copy of the statement referred to, and of the manner in which the same was disposed of:

PLAINTIFF'S REQUESTS TO FIND, MADE PURSUANT TO SECTION 1023 OF THE NEW YORK CODE OF CIVIL PROCEDURE.

*First.* That the allegations of the complaint in regard to the citizenship of the plaintiff, the citizenship and powers and liabilities of the defendant, the organization and capital of the National Albany Exchange Bank, the ownership of the shares of the capital stock of the National Albany Exchange Bank, the assessment of the stockholders in the said bank named in said complaint by the Board of Assessors of the city of Albany, the names and residences of
278 said stockholders, the collection of taxes from said stockholders, the payment of the same to the treasurer of the county of Albany, and the demand made by Chauncey P. Williams before the commencement of this action of the treasurer of the county of Albany, are true, as therein set forth.

I so find. A. C. C.

*Second.* That the amounts collected from the said stockholders and paid to the treasurer of the county of Albany, and the times when the said amounts were so paid to said treasurer were as follows, to wit:

$907.90, paid August 11, 1874.
$127.84, paid August 11, 1874.
$1,868.06, paid May 1, 1875.
$1,409.33, paid May 27, 1876.
$11,604.75, paid May 1, 1875.
$8,147.26, paid May 27, 1876.

I so find. A. C. C.

*Third.* That the sums above named were not paid voluntarily by said stockholders, but were forcibly collected by the marshal of the city of Albany, under a warrant issued to said marshal by the receiver of taxes of said city, pursuant to a warrant issued to said receiver of taxes by the Board of Supervisors of the county of Albany, by levying upon the property of the said stockholders respectively, as alleged in said complaint.

279

I so find. A. C. C.

*Fourth.* That the allegations of the complaint with reference to the assignments by the respective stockholders of the said bank of their claims against the county of Albany, by reason of the matters alleged in the said complaint, are true as set forth in said complaint, and that the plaintiff, at the time of the commencement of this action, was the owner and holder of all claims and rights of action against the county of Albany, or against the defendant, arising out of the matters alleged and set forth in the said complaint.

280

I so find. A. C. C.

*Fifth.* That the allegations in the fourth count of said complaint as to the presentation to the said board of assessors by said Chauncey P. Williams of the affidavit of his indebtedness, and the request by him for a reduction of his assessment on his bank stock, and the refusal of said board of assessors to make such reduction, and the application of said Williams to the Supreme Court of the State of New York for a writ of mandamus, and the subsequent legal proceedings thereon, including the decision of the Supreme Court of the United States are true, as set forth in said fourth count.

I so find. A. C. C.

281 *Sixth.* That there were during the years 1873, 1874 and 1875, in the Sixth ward of the city of Albany, the following banks and banking associations:

The Mechanics and Farmers' Bank.
The Union National Bank.
The National Albany Exchange Bank.
The Merchants' National Bank.
The First National Bank.

The Albany City National Bank.
The New York State National Bank.
The Albany County Bank.
The National Commercial Bank.
I so find. A. C. C.

*Seventh.* That all of the above named banks, with the
282 exception of the Mechanics and Farmers' Bank and the Albany County Bank (which were State banks), were National banks, organized under the laws of the United States, and that there were no banks or banking associations during the years aforesaid, in the city of Albany, other than the nine banks above mentioned.
I so find. A. C. C.

*Eighth.* That during the said years the assessors of the city of Albany assessed the shares of all the said banks and banking associations at their par value, deducting from such par value the assessed value of the real estate of each bank, without reference to the actual value of such shares.
I so find. A. C. C.

*Ninth.* That this mode of assessment of bank stock was habitual and intentional on the part of said assessors, *and by a rule*
283 *prescribed and adopted by said assessors for themselves, and acted upon for many years*, namely, from 1870 or 1871, to and including 1880.
I decline to so find, as I think the statement underscored is hardly sustained by the proof. A. C. C.

*Nine-and-a-half.* That such mode of assessment was not consented to by the assignors of the plaintiff, or by the officers of the National Albany Exchange Bank, but was objected to by said officers, who insisted that it was the duty of the assessors to assess all property, including bank stock, at its true and actual value.
I so find. A. C. C.

*Tenth.* That the shares of said banks differed in value, and the actual value of shares in said banks, of the par value of $100, was as follows:
Albany County Bank, $100.
284 Union National Bank, $110.
National Albany Exchange Bank, $125.
Albany City National Bank, $160.
First National Bank, $160.
New York State National Bank, $170.
Merchants' National Bank, $210.
National Commercial Bank, $260.
Mechanics and Farmers' Bank, $285.
Except that in the year 1873 the value of shares in the Albany City National Bank was $133.
I so find, subject to correction by defendants of computation, etc. A. C. C.

*Eleventh.* That in the year 1873 the aggregate total assess-
285 ment of real and personal property in said Sixth ward was as follows:

| | |
|---|---|
| Total assessment, real estate | $7,113,830 00 |
| personal | 3,304,800 00 |
| Total | $10,418,630 00 |

And of the assessments upon bank stock as follows:

| | |
|---|---|
| Mechanics and Farmers', personal | $280,000 00 |
| Union National | 475,000 00 |
| National Albany Exchange | 269,550 00 |
| Merchants' National | 160,000 00 |
| 286 First National | 270,000 00 |
| Albany City National | 475,000 00 |
| New York State National | 322,000 00 |
| Albany County | 200,000 00 |
| National Commercial | 450,000 00 |
| | $2,901,550 00 |

I so find, subject to correction by defendants of computation, etc. A. C. C.

*Twelfth.* That in the year 1874 the aggregate total assessment of real and personal property in said Sixth ward was as follows:

| | |
|---|---|
| Total assessment real estate | $6,931,542 00 |
| Personal | 2,863,550 00 |
| | $9,795,092 00 |

And the assessment upon bank stock as follows:

| | |
|---|---|
| Mechanics and Farmers', personal | $280,000 00 |
| 287. Union National | 225,000 00 |
| National Albany Exchange | 269,550 00 |
| Merchants' National | 160,000 00 |
| First National | 270,000 00 |
| Albany City National | 270,000 00 |
| New York State National | 322,000 00 |
| Albany County | 200,000 00 |
| National Commercial | 450,000 00 |
| | $2,446,550 00 |

I so find, subject to correction by defendants of computation etc. A. C. C

*Thirteenth.* That in the year 1875, the aggregate total assessment of real and personal property in said Sixth ward was as follows:

| | | |
|---|---|---|
| | Total assessment real estate | $7,062,842 00 |
| 288 | Personal | 2,613,050 00 |
| | | $9,675,892 00 |

And the assessment upon bank stock as follows:

| | |
|---|---|
| Mechanics and Farmers', personal | $280,000 00 |
| Union National | 225,000 00 |
| National Albany Exchange | 269,550 00 |
| Merchants' National | 160,000 00 |
| First National | 270,000 00 |
| Albany City National | 270,000 00 |
| New York State National | 315,000 00 |
| Albany County | 200,000 00 |
| National Commercial | 270,000 00 |
| 289 | $2,259,550 00 |

I so find, subject to correction by defendants of computation, etc. A. C. C.

*Fourteenth.* That the actual value of the bank stock so assessed in the year 1878 was as follows:

| | | |
|---|---|---|
| | Mechanics and Farmers' Bank | $937,500 00 |
| | Union National Bank | 525,000 00 |
| | National Albany Exchange Bank | 344,550 00 |
| | Merchants' National Bank | 380,000 00 |
| | First National Bank | 450,000 00 |
| | Albany City National | 640,000 00 |
| | New York State National | 567,000 00 |
| 290 | National Commercial | 1,250,000 00 |
| | Albany County | 200,000 00 |
| | | $5,294,050 00 |

I so find, subject to computation, etc., by defendants. A. C. C.

*Fifteenth.* That the actual value of the bank stock so assessed in the year 1874 was as follows:

| | |
|---|---|
| Mechanics and Farmers' | $937,500 00 |
| Union National | 250,000 00 |
| National Albany Exchange | 344,550 00 |
| Merchants' National | 380,000 00 |
| First National | 450,000 00 |
| Albany City National | 450,000 00 |

| | | |
|---|---|---|
| | New York State National | $567,000 00 |
| 291 | National Commercial | 1,250,000 00 |
| | Albany County | 200,000 00 |
| | | $4,829,050 00 |

I so find, subject to computation, etc., by the defendants. A. C. C.

*Sixteenth.* That the actual value of the bank stock so assessed in the year 1875 was as follows:

| | |
|---|---|
| Mechanics and Farmers' | $937,500 00 |
| Union National | 250,000 00 |
| National Albany Exchange | 344,550 00 |
| Merchants' National Bank | 380,000 00 |
| First National Bank | 450,000 00 |
| Albany City National Bank | 450,000 00 |
| National Commercial Bank | 750,000 00 |
| Albany County Bank | 200,000 00 |
| 292 | $3,762,050 00 |

I so find, subject to computation and correction, etc., by the defendants. A. C. C.

*Seventeenth.* That the rate or per centage of assessment of bank stock, in proportion to actual value, was in the year 1873 as follows:

Aloany County Bank, 100.
Union National Bank, 90.
National Albany Exchange Bank, 80.
Albany City National Bank, 75.
First National Bank, 62½.
New York State National Bank, 58.
Merchants' National Bank, 47.
National Commercial Bank, 38.
Mechanics and Farmers' Bank, 35.

I so find, subject to correction of computation, etc., by the defendants. A. C. C.

*Eighteenth.* That the rate or per centage of assessment, in
293 proportion to actual value of the shares of said bank stock, was in the years 1874 and 1875 the same as in 1873, except that the rate of assessment on the shares of the Albany City National Bank was, in the years 1874 and 1875, sixty-two and one-half per cent of actual value.

I so find. A. C. C.

*Nineteenth.* That the average rate of assessment of all personal property, including moneyed capital, assuming that personal property other than bank stock was assessed at its full value, was as follows:

In 1873, fifty-eight per cent; in 1874, fifty-four per cent; in 1875, sixty-three per cent.

I decline to find these as facts proved. A. C. C.

*Twentieth.* That the rate of assessment on the shares of the
294 plaintiff's assignors in the National Albany Exchange Bank, during each of the years aforesaid, in proportion to actual value, was eighty per cent.

I decline to find this as a fact proved. A. C. C.

*Twenty-first* That in said years the rule acted upon by the said assessors, in assessing real estate in the city of Albany, including said Sixth ward, was to assess it at about forty per cent of the actual value thereof.

I so find. A. C. C.

*Twenty-second.* That in the years aforesaid a large portion of the moneyed capital in the Sixth ward of the city of Albany escaped taxation; that there was no way provided by law by which the assessors could ascertain the amount of taxable personal prop-
295 erty except bank stock, as to which there was during said years a way provided by law for the assessors to ascertain the amount and value thereof, but that the law relating to the assessment and taxation of bank stock, enabled the said assessors to ascertain the amount thereof, and by whom it was held, and to assess the same for taxation, so that no portion thereof could escape taxation.

I decline to so find, as not in exact accordance with the proof. A. C. C.

CONCLUSIONS OF LAW.

*First.* The subject matter of this action is within the jurisdiction of the Circuit Court of the United States irrespective of any question as to the citizenship or residence of the parties.

I so find. A. C. C.

*Second.* The plaintiff is the holder and owner of all claim or
296 right of action arising from the facts above set forth against the defendant herein.

I so find. A. C. C.

*Third.* The rule adopted and acted upon by the assessors of assessing all bank stock at its par or nominal value, irrespective of actual value, necessarily resulted in assessing the shares of stock in said National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally in the hands of individual citizens of the State of New York, and was therefore a violation of the restriction contained in section 5219 of the Revised Statutes of the United States, and was illegal and void.

I decline to so find. A. C. C.

297 *Fourth.* That the plaintiff is entitled to recover of the defendant:

1 The sum of $907.90, with interest from August 11, 1874.
2. The sum of $127.84, with interest from August 11, 1874.
3. The sum of $1,868.06, with interest from May 1, 1875.
4. The sum of $1,409.93, with interest from May 29, 1876.
5. The sum of $11,604.75, with interest from May 1, 1875.
6. The sum of $8,147.26, with interest from May 29, 1876, amounting to the date of this decision to $

Dated, 1883.

I decline to so find. A. C. C.

And afterwards the plaintiff's attorneys duly filed exceptions
298 to the said decision of the court, and to the refusals of the court to find the propositions of fact and rulings of law as requested, as follows:

1. The plaintiff excepts to the fourth finding of fact contained in the decision of the court, namely, that the plaintiff has failed to establish the allegations of the complaint that the several assessments therein referred to were at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of said State, for that the court should have found that such allegations were established.

2. The plaintiff excepts to the ruling or conclusion of the court that the plaintiff is not entitled to recover upon any other
299 than the fourth count of the said amended complaint.

3. The plaintiff excepts to the refusal to find as requested in the ninth proposition submitted by plaintiff, that the mode of assessment of bank stock adopted by the assessors, was by a rule prescribed and adopted by said assessors for themselves, and acted upon for many years, namely, from 1870 or 1871 to and including 1880.

4. The plaintiff excepts to the refusal by the court to find, in accordance with the nineteenth proposition of fact submitted by plaintiff, that the average rate of assessment of all personal property, including moneyed capital, assuming the personal property other than bank stock was assessed at its full value, was as follows: in 1873, fifty-eight per cent; in 1874, fifty-four per cent; in 1875, sixty-
300 three per cent.

5. The plaintiff excepts to the refusal to find in accordance with the twentieth proposition submitted by plaintiff, that the rate of assessment on the shares of the plaintiff's assignors in the National Albany Exchange Bank during each of the years aforesaid, in proportion to actual value, was eighty per cent.

6. The plaintiff excepts to the refusal of the court to find in accordance with the twenty-second proposition of fact submitted by plaintiff,

on the ground that the proof established the statements contained in said twenty-second proposition.

7. The plaintiff excepts to the refusal of the court to find in accordance with the third conclusion of law submitted by the plain-
301 tiff, namely, that the rule adopted and acted upon by the assessors necessarily resulted in assessing the shares of stock in said National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally in the hands of individual citizens of the State of New York, and was, therefore, a violation of the restriction contained in section 5219 of the Revised Statutes of the United States, and was illegal and void.

8. The plaintiff excepts to the refusal of the court to find that the plaintiff was entitled to recover of the defendant, as stated in the fourth conclusion of law submitted to the court by the plaintiff, as above.

Before the decision of the court was made in this action,
302 and within the proper time, defendants' counsel submitted to the court, pursuant to the practice in the State courts of New York, a statement in writing of the facts which defendant's counsel regarded as established by the evidence, and the conclusions of law, which defendants' counsel requested to be made thereon. The court, pursuant to the proper practice, noted in the margin of the statement so submitted the manner in which each proposition was disposed of. The following is a copy of such statement and of the rulings thereon on the margin.

*First.* That in the spring of 1880, the several stockholders mentioned in the causes of action numbered the eighth and ninth in
plaintiff's complaint, assigned to the president of the National
303 Albany Exchange Bank, Mr. Chauncey P. Williams, their right of action against the defendants for the causes alleged in said accounts in the complaint; that soon thereafter Mr. Williams, who was then and has ever since been a resident of New York State, assigned such alleged cause of action, together with alleged causes of action in his own and in his wife's favor, to the plaintiff herein, his wife's nephew, who then was and ever since has been a resident of Chicago, in the State of Illinois.

I so find. A. C. C.

*Second.* That the causes of action set up in the complaint herein were assigned to the plaintiff for the purpose of creating a case cognizable under the act of Congress passed March 3, 1875,
304 and said plaintiff was improperly or collusively joined for such purpose.

I decline to so find. A. C. C.

*Third.* That the amounts collected from the different stockholders in the years 1875 and 1876 are correctly set out in the plaintiff's

complaint in the counts numbered eighth and ninth, and in the cases of stockholders holding an amount of stock less than fifty shares the claim of each of such stockholders amounted at the time of the assignment to C. P. Williams, and of Williams to plaintiff, and at the commencement of this action to less than $500, and in regard to each claim which amounted to less than $500, the assignments of the stockholders to the said Williams and of said Williams to
305 said plaintiff were made for the purpose of creating as to such claims a case cognizable under the act of Congress passed March 3, 1875, and said plaintiff as to such claims was improperly or collusively joined for such purpose.

I decline to so find. A. C. C.

*Fourth.* The following statement contains the names of the stockholders in the years 1875 and 1876 who owned less than fifty shares of stock in said bank, and also a statement of the amount of the principal of the claim of each of said stockholders on the days mentioned in the said counts numbered eighth and ninth of plaintiff's complaint, when the alleged levy was made, and the total principal of such claims amounted in the year 1875 to $3,408.40, and in the year 1876 to $2,254.68.

306 I so find, subject to a correction by plaintiff of computation, etc. A. C. C.

*List of stockholders assessed, the number of whose shares did not exceed fifty for each person, with the amount collected and paid to Albany County Treasurer, on or about May 1, 1876.*

SCHEDULE.

| Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|
| Mary E. Allen | 25 | $115 31 |
| William J. Blackall | 14 | 64 57 |
| Anson H. Blakeman | 10 | 46 12 |
| Estate Gould Blakeman | 10 | 46 12 |
| 307 Henry H. Bulkley | 20 | 92 25 |
| Martha P. Butler | 10 | 46 12 |
| Nicholas Clapper | 11 | 50 75 |
| Thomas B. Cole | 13 | 59 95 |
| Thomas Comstock | 20 | 92 25 |
| Theodore F. Cornell | 25 | 115 30 |
| Ann Darling | 10 | 46 12 |
| Estate William Dixon | 10 | 46 12 |
| Gideon D. Eames | 30 | 138 37 |
| Milo R. Eames | 20 | 92 25 |
| Hester S. Emerson | 10 | 46 12 |
| Azuba B. Fairchild | 5 | 23 05 |
| 308 Daniel H. Gardner | 4 | 18 45 |
| Charlotte Gardner | 1 | 4 60 |
| Sarah M. Gardner | 2 | 9 22 |
| Sarah M. Gould | 2 | 9 22 |

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Estate of John Gould | 8 | $36 90 |
| | Estate of Alexander Greer | 25 | 115 31 |
| | Thomas H. Greer | 25 | 115 31 |
| | Harriet Hilton | 10 | 46 12 |
| | Charles B. Lansing | 25 | 115 31 |
| | Mary L. G. Lewis | 1 | 4 60 |
| | Sarah A. Lansing | 15 | 69 18 |
| | James McElroy | 5 | 23 05 |
| 309 | Mary Patrick | 10 | 46 12 |
| | Spencer S. B. Peck | 10 | 46 12 |
| | Nancy L. Peck | 40 | 184 50 |
| | Henry C. Peck | 10 | 46 12 |
| | Samuel S. Peck | 10 | 46 12 |
| | Myron R. C. Peck | 10 | 46 12 |
| | Estate of Mary E. Peckham | 20 | 92 25 |
| | Robert C. Pruyn | 10 | 46 12 |
| | Sarah and Agnes Pruyn | 45 | 207 56 |
| | James Roy | 10 | 46 12 |
| | Adam Shields | 3 | 13 83 |
| | Elizabeth F. Spoor | 10 | 46 12 |
| 310 | William G. Thomas, ex'r | 20 | 92 25 |
| | Francis Vail | 15 | 69 18 |
| | Margaret Ann Van Loon | 10 | 46 12 |
| | Catharine Van Schaack | 10 | 46 12 |
| | John L. Voorhees | 10 | 46 12 |
| | James C. Visscher, ex'r | 5 | 23 05 |
| | Michael Warren | 10 | 46 12 |
| | Clement Warren | 20 | 92 25 |
| | Estate of John T. Wendover | 30 | 138 37 |
| | George P. Wilson | 15 | 69 18 |
| | Abraham F. Wilson | 20 | 92 25 |
| | Estate of Abraham Wing | 20 | 92 25 |
| 311 | Total | | $3,408 40 |

*List of stockholders assessed, the number of whose shares did not exceed fifty for each person, with the amount collected and paid to Albany County Treasurer on or about May 26, 1876.*

SCHEDULE.

| | Names of Stockholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Mary E. Allen | 25 | $82 90 |
| | William J. Blackhall | 14 | 46 41 |
| | Anson H. Blakeman | 10 | 33 16 |
| 312 | Estate of Gould Blakeman | 10 | 33 16 |
| | Martha P. Butler | 10 | 33 16 |
| | Nicholas Clapper | 11 | 36 47 |
| | Thomas B. Cole | 13 | 43 08 |
| | Thomas Comstock | 20 | 66 32 |

| | Names of Shareholders. | No. of shares. | Tax collected. |
|---|---|---|---|
| | Theodore F. Cornell | 25 | $82 90 |
| | Ann Darling | 10 | 33 16 |
| | Sarah Deyermand | 5 | 16 58 |
| | Estate of William Dickson | 10 | 33 16 |
| | Gideon D. Eames | 30 | 99 48 |
| | Milo R. Eames | 20 | 66 32 |
| | Hester S. Emerson | 10 | 33 16 |
| 313 | John T. Foote | 10 | 33 16 |
| | Azuba G. Fairchild | 5 | 16 58 |
| | Daniel H. Gardner | 4 | 13 24 |
| | Charlotte Gardner | 1 | 3 30 |
| | Sarah M. Gardner | 2 | 6 62 |
| | Sarah M. Gould | 2 | 6 62 |
| | Harriet Hilton | 10 | 33 16 |
| | Sarah A. Lansing | 15 | 49 74 |
| | Caroline M. Lathrop | 10 | 33 16 |
| | Charles B. Lansing | 25 | 82 90 |
| | Mary L. G Lewis | 1 | 3 30 |
| 314 | James McElroy | 5 | 16 58 |
| | John McElroy | 10 | 33 16 |
| | Peter Monteath | 10 | 33 16 |
| | Mary Patrick | 10 | 33 16 |
| | Spencer S. B. Peck | 10 | 33 16 |
| | Henry C. Peck | 10 | 33 16 |
| | Nancy L. Peck | 40 | 132 64 |
| | Samuel S. Peck | 10 | 33 16 |
| | Myron R. C. Peck | 10 | 33 16 |
| | Robert C. Pruyn | 10 | 33 16 |
| | Agnes Pruyn | 45 | 149 22 |
| | James Roy | 10 | 33 16 |
| 315 | Adam Shields | 3 | 9 92 |
| | Eliza F. Spoor | 10 | 33 16 |
| | Francis Vail | 15 | 49 74 |
| | Catharine Van Schaack | 10 | 33 16 |
| | James C. Visscher, ex'r | 5 | 16 58 |
| | Thomas E. Van Loon | 10 | 33 16 |
| | Richard Van Rensselaer | 1 | 3 30 |
| | Richard Van Rensselaer, adm | 6 | 19 88 |
| | Richard Van Rensselaer, ex'r | 5 | 16 58 |
| | Edward Visscher | 12 | 39 78 |
| | John L. Voorhees | 10 | 33 16 |
| | Clement Warren | 20 | 66 32 |
| 316 | Estate of John T. Wendover | 30 | 99 48 |
| | George P. Wilson | 15 | 49 74 |
| | Abraham F. Wilson | 20 | 66 32 |
| | Estate of Abraham Wing | 20 | 66 32 |
| | Total | | $2,254 68 |

*Fifth.* The assessors did not at any of the times in question habitually or intentionally, or by any rule prescribed by themselves or by anyone whom they were bound to obey, assess the shares of
317 national banks higher in proportion to their actual value than other moneyed capital generally.

I so find. A. C. C.

*Sixth.* The method pursued by the assessors in assessing the shareholders in national banks during all the period in question in this case, was generally satisfactory to the owners of national bank stock in the city of Albany with the exception of Mr. Williams and some few other shareholders in the National Albany Exchange Bank, and such method was pursued by the assessors with no purpose or intention of unduly assessing shares in national banks, but simply because it was thought by the assessors to be a way that was most
318 satisfactory to the owner of such property and the best in itself.

I so find. A. C. C.

*Seventh.* It was during the time in question the endeavor and intention of the assessors so far as possible to assess all personal property that was taxable in the hands of individual citizens in the city of Albany, and at its full value, and they never neglected or refused to assess such property at such value, so far as they were able, and they never had any intention to permit personal property or moneyed capital in the hands of individual citizens to escape taxation and at its full value.

I so find. A. C. C.

*Eighth.* That the moneyed capital in the hands of individual
319 citizens (other than the shares of national banks) which was at the time in question assessed in the city of Albany, was assessed at its full value.

I so find. A. C. C.

*Ninth.* That at the time in question the shares of national bank stock in the city of Albany (including the shares of the National Exchange Bank) were assessed at less than their full value.

I so find. A. C. C.

*Tenth.* The assessors had jurisdiction in the cases mentioned in the complaint to make an assessment upon the shareholders in the National Albany Exchange Bank by reason of their ownership
320 of the shares of stock therein, and there is no evidence in this case that all the provisions of the state law relating to such assessments were not fully and strictly complied with.

I so find. A. C. C.

*Eleventh.* None of the assessments mentioned in the complaint was ever set aside.

I so find. A. C. C.

CONCLUSION OF LAW.

That the whole complaint should be dismissed with the exception of the fourth count; the plaintiff being entitled to judgment on the fourth count, and the defendants on all the other counts.

I so find. A. C. C.

It was stipulated on the trial of this action that either party
321 may refer upon any argument in this case to any law of the State of New York, or to any reported decision of any court bearing on the questions at issue without proof, as if the same had been duly proved and given in evidence. Accordingly, on the argument in said Circuit Court, the following, among other laws of the State of New York, were referred to, and considered in evidence: Chapter 86 of the Laws of 1850.

The provisions of the Revised Statutes of the State of New York, relating to the assessment and taxation of real and personal property, and stock in corporations: Chapter 761 of the Laws of 1866.

Also the following, among other reported decisions:

The People v. The Assessors, 2 Hun, 583.

322 Williams v. Weaver, 75 N. Y., 30.

Brevoort v. City of Brooklyn, 89 N. Y., 128.

Van Rensselaer v. Witbeck, 70 N. Y., 517.

Hinckley v. Cooper, 22 Hun, 253.

And because the exceptions, admissions and stipulations made and filed in this action do not appear of record, this bill of exceptions is made and settled by the judge who presided at the trial of this action, and signed on this 27th day of October, 1883, and ordered to be filed in the clerk's office of this court, in and for the Northern District of New York, and to be returned with the record herein upon any writ of error that may be issued in this action.

[L. S.] ALFRED C. COXE.

The foregoing bill of exceptions is settled and agreed upon by the attorneys of the respective parties, this 26th day of October, 1883.

HALE & BULKLEY,
*Plaintiff's Attorneys.*

PECKHAM & ROSENDALE,
*Defendants' Attorneys.*

Indorsed: Bill of exceptions on the part of plaintiff, filed December 13, 1883. W. S. Doolittle, Clerk.

CIRCUIT COURT OF THE UNITED STATES,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

The defendant hereby waives the giving of any security on
323 the part of the plaintiff for the payment of the costs in the Supreme Court payable by plaintiff, and consents that a writ of error may be sued out herein without any bond or undertaking so far as the defendant can waive the same.

Dated *October* 25, 1883.

PECKHAM & ROSENDALE,
*Defendants' Attorneys.*

Indorsed: Stipulation waiving plaintiff's giving security for costs, etc. Filed December 13, 1883. Wm. S. Doolittle, Clerk.
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CIRCUIT COURT OF THE UNITED STATES,
*Northern District of New York:*

EDWARD N. STANLEY
*vs.*
THE BOARD OF SUPERVISORS OF ALBANY COUNTY.
*Opinion.*

MATTHEW HALE, for plaintiff.

RUFUS W. PECKHAM and SIMON W. ROSENDALE, for defendants.

COXE, J.—The plaintiff, a citizen of Illinois, seeks to recover certain moneys alleged to have been illegally exacted as taxes from various shareholders of the National Albany Exchange Bank. The
325 demands in suit were first assigned to Mr. C. P. Williams, a citizen of this State. Williams thereafter assigned to the plaintiff, in circumstances which would probably require a dismissal of the suit, pursuant to the fifth section of the act of March 3, 1875, were it not for the fact that the court had jurisdiction prior to and irrespective of the assignment.

That the plaintiff's immediate assignor might have maintained this action, because the controversy is one arising "under the laws of the United States," was directly decided on the former trial, and is *res adjudicata* in this court.

The assignment was not made for the purpose of "creating a case" within the jurisdiction of the court, for such a case was already in existence.

326 As the court must, in any event, retain jurisdiction, an inquiry into the relations existing between the plaintiff and his assignor can lead to no tangible result.

Where a party who is entitled to sue in the Federal courts, transfers his cause of action to another who has the same right, of what moment is it that the transfer was for an inadequate consideration, or was wholly without consideration, so long as the legal title is transferred.

The defendant has no reasonable ground for complaint; and the court, for whose advantage the statute was framed, has not been imposed upon or burdened with an improper or collusive controversy.

Regarding the other point that the court cannot retain juris-
327 diction where the amounts assigned were less than $500, there is more doubt.

The assignments were made without any other consideration than that contained in the agreement, viz.: the assignee was to bring suit, pay all expenses, and, in case of recovery, account for half of the net proceeds.

It is very certain that a shareholder whose claim against the defendants amounted to less than $500, could not maintain an action in this court. It would also seem clear that Mr. Williams was not prohibited from making a *bona fide* purchase of all the claims. Being the absolute owner of all he could institute suit in this court for the whole amount.

328 "The matter in dispute" would then be the property of one man.

In other words if a party is the honest owner of a claim which he is entitled to enforce in the Federal courts, his right should not be defeated by proof that the claim was at one time composed of several separate and distinct items of less than $500 each.

It would be otherwise if the amounts were transferred
329 solely to make a case, such a transaction would come within the inhibition of the act of 1875, and the rule as laid down in Williams v. Nottawa.

But the proof being clear that before a single shareholder assigned, Mr. Williams was the owner of a claim sufficient in amount to give the court jurisdiction, it can hardly be said that the transfers were collusively or improperly made.

In view of the conclusion reached upon the merits in favor of the defendants, the foregoing considerations are, perhaps, unnecessary, but it is thought that every question should be passed upon in order that the case, should it again reach the Supreme Court, may there be finally disposed of.

330 Upon the merits, the main question which presents itself, is the following: Did the assessors, in the language of the Supreme Court, "habitually and intentionally, or by some rule prescribed by themselves, or by some one whom they were bound to obey, assess the shares of the national banks higher in proportion to their actual value than other moneyed capital generally?"

The amended complaint contains a broad allegation designed to meet the suppositive case suggested by the Supreme Court.

As originally drawn, however, the averment was, in substance, that the assessment was at a greater rate than that imposed upon the

shares of a local State bank and other moneyed capital in the hands of individuals. Regarding this allegation, the Supreme Court
331 says: "We have, however, much difficulty in finding a valid ground of recovery in this statement * * * We are quite clear that the shares of the plaintiff are not relieved from taxation because a single bank of the State has been favored by mistake or by intention. For errors of this kind the statutes of New York provide the correction, which should be taken in time, and we should be very reluctant to hold that, when it has been shown that a single bank or a single individual has been taxed less than he should be, all other taxes, however just, are thereby invalidated."

Do the proofs in this case show more? Does not the language just quoted apply with great force and directness to the present status of the case?

332 The evidence shows that in the years 1873, 1874 and 1875, there were in Albany seven National and two State banks, the Albany County and the Mechanics and Farmers'.

All of the nine banks were located in the Sixth Ward of that city. The stock of each was assessed at par.

There were then no "individual bankers" within the meaning of the law, in the city. There was no evidence of other moneyed capital, disconnected from personal property in the said ward. The assessors denied that there was ever any intent to assess national bank shares at a higher rate than other moneyed capital, and that any rule having such a result in view was ever prescribed or followed.

They further assert that the assessment at par was satisfactory
333 to all the banks except the Exchange Bank, and to the shareholders generally, except Mr. Williams and a few others. It is contended on behalf of the plaintiff that, because other bank stock was worth more than that of the Exchange Bank, the latter was, within the meaning of the act of Congress, assessed at "a greater rate" than other moneyed capital.

The plaintiff submits various statements and estimates,
334 from which it appears that the rate of assessment of the shares of the Exchange Bank, in proportion to their actual value, was seventy-seven per cent, and of the two State banks 100 per cent and thirty-five per cent respectively; one State bank being assessed at a less and the other at a greater rate. All of the national banks were assessed at a less rate than one of the State banks — the Albany County Bank, and at a greater rate than the other — the Mechanics and Farmers' Bank.

The assessment of bank shares at par is, in the circumstances developed here, not only unequal and inequitable, but unnecessary and indefensible. And yet, even though a more perfect system were devised, it would be impossible to maintain it long if the con-
335 tention of the plaintiff is correct. Where the shares have no market value — there being no sales; where bank officials, who have the best means of observation, are reticent; where intelligent men differ widely in their estimates, how are the taxing officers to ascertain the true, the actual, the exact value of bank stock?

Even though sales are numerous and open, no safe criterion is furnished.

A recent instance is recalled where the shares of a national bank were eagerly purchased at 175, though at the time the bank was insolvent, its failure occurring but a few weeks later. But the inevitable deduction from the argument of the plaintiff would seem to be that if the system is imperfect, if it results in placing a
336 higher tax, even though the difference be infinitesimal, upon his shares than upon the shares of a few other stockholders, State and National, the rule which produces this result is radically vicious, an infraction of the act Congress, and void, everywhere, and at all times.

If this be true, taxation of national bank shares must cease, for there must always be a system of assessment, and it must be fallible and full of imperfections. It is thought that the law does not require such absolute accuracy.

If there are hardships, do they not fall on State and national banks alike; if errors are to be corrected, should it not be done in the manner pointed out by the State statutes; or if relief is there refused, by the selection of better and more competent men to act as assessors?

After the budgets have been made up and the taxes levied
337 and paid, it is too late to take advantage of what, in its legal aspect, is little more than a mistake of judgment on the part of officers charged with judicial functions.

This would seem to be so in any case, and especially where it is sought to recover, not the excess alleged to be illegal, but the whole amount of the tax.

It was the intention of Congress to prevent the State by hostile legislation, and the taxing officers by a hostile rule, from discriminating against national banks.

But was the law intended to apply where all bank shares, State and national, are placed on a common level? It is thought not. While the administration of the law depends upon human agency, there necessarily must be imperfections and unjust discriminations.

Assessments are made by men residing in different localities and entertaining opinions regarding property totally at variance with each other. While this is so — and it must be so always — it will be found impossible to devise a system of taxation which is
338 absolutely equitable and fair, which is entirely free from partialities and mistakes.

To use the language of Mr. Justice Miller in the State railroad tax cases: "Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. * * * But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect * * must inevitably partake largely of the imperfection of human nature, and of the evidence on which human judgment is founded."

No authority has been cited, and it is thought none can be found,

where a recovery has been had upon facts at all approximating those developed here. There is not proof sufficient to induce the
339 court to say that the assessment was made pursuant to a uniform rule deliberately adopted by the assessors for the purpose of discriminating against the shares of national banks, there is no proof which would justify a conclusion that the taxing officers habitually and intentionally, or by an obligatory and potential rule assessed the shares in question higher in proportion to their actual value than other moneyed capital generally.

It follows, therefore, that the plaintiff is entitled to judgment on the fourth count, and the defendants on all the other counts.

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340 UNITED STATES CIRCUIT COURT.
*Northern District of New York:*

EDWARD N. STANLEY
*v.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

Mandate of Supreme Court.
Amended complaint.
Order of discontinuance as to certain counts.
Decision.
Judgment.
Original complaint, first count.
Amended answer and stipulation.
Stipulation No. 2.
Stipulation No. 3.
341 Bill of exceptions.
Waiver of security.
Assignment of errors.
Opinion of Circuit Judge.

It is hereby stipulated and agreed that the foregoing papers on file in the office of the Clerk of the Circuit Court at Utica, be deemed and considered as the full and complete record in the above entitled action, and that copies of the same may be returned and certified as a correct transcript of such record, to the Supreme Court of the United States, with the writs of error, and citation herein.

Dated *December* 17, 1883.

PECKHAM & ROSENDALE,
*Attorneys for Defendants in Error.*

HALE & BULKLEY,
*Attorneys for Plaintiff.*

342 Indorsed: Stipulation filed December 19, 1883.

UNITED STATES OF AMERICA, *ss.:*

The President of the United States, to the Judges of the Circuit Court of the United States, for the Northern District of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of the United States, in and for the Northern District of New York, before you, between Edward N. Stanley, plaintiff, and the Board of Supervisors of the county of Albany, defendants, manifest error hath intervened, to the great damage of the said Edward N. Stanley, as by his complaint appears. Now, therefore, we being willing that full and speedy justice be done the said Edward N. Stanley, and that the error, if any hath been committed, should be duly corrected, do command you if judgment be therein given, that you send the record thereof and proceedings aforesaid, distinctly and openly under
343 your seal, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the second Monday in October, one thousand eight hundred and eighty-four, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 27th day of October, in the year of our Lord, 1883.

[L. S.] W. S. DOOLITTLE, *Clerk.*

Allowed by —

ALFRED C. COXE.

344 Indorsed: United States Supreme Court, Edward N. Stanley against the Board of Supervisors of the county of Albany. Writ of Error. Matthew Hale, attorney for plaintiff, Albany, N. Y. Due service of a copy of the within writ admitted. December 12, 1883. Peckham & Rosendale, attorneys for defendants. Circuit Court of United States, Northern District of New York. Filed December 13, 1883. Wm. S. Doolittle, Clerk.

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UNITED STATES OF AMERICA:

To the Board of Supervisors of the county of Albany, greeting:

You are hereby cited and admonished to be and appear at a
345 Supreme Court of the United States, to be holden at Washington, on the second Monday of October, 1884, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Northern District of New York, wherein Edward N. Stanley is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said

writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of October, 1883.

ALFRED C. COXE.

Indorsed: United States Supreme Court. Edward N. Stanley against The Board of Supervisors of the county of Albany.
346 Citation. Matthew Hale, attorney for plaintiff, Albany, N. Y. Due service of a copy of the within citation admitted December 12, 1883. Peckham & Rosendale, attorneys for plaintiff. United States Circuit Court, Northern District of New York. Filed December 13, 1883. Wm. S. Doolittle, Clerk.

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UNITED STATES OF AMERICA,
*Northern District of New York:*

I, William S. Doolittle, Clerk of the Circuit Court of the United States of America, for the Northern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, folioed from one to 346, inclusive, contain a true, full and complete transcript of the record and proceedings had in said court in the case of Edward N. Stanley v. The Board of Supervisors of the county
347 of Albany, as the same has been stipulated by and between the attorneys for the respective parties thereto, as hereinbefore set out.

In testimony whereof, I have set my hand and caused the seal of the said court to be hereunto affixed, at the city of Utica, in said Northern District of New York, this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and eighth.

[L. S.] W. S. DOOLITTLE, *Clerk.*

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SUPREME COURT OF THE UNITED STATES:

EDWARD N. STANLEY, Plaintiff in Error, *vs.* THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendants in Error.

*Assignment of Errors of October Term, in the year of Our Lord*, 1884.

Afterwards, to wit.: on the second Monday in October, in
348 this same term, before the Justices of the Supreme Court of the United States, at the Capitol in the city of Washington, came the said Edward N. Stanley, by Matthew Hale, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit.:

1. The court erred in deciding that the plaintiff failed to establish the allegations in the complaint, that the several assessments therein

referred to were at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of New York.

2. The court erred in deciding that the plaintiff was not entitled to recover upon any other count of the amended complaint
349 than the fourth.

3. The court erred in refusing to find in pursuance of the ninth request made by plaintiff, that the mode of assessment adopted by the assessors of the city of Albany in assessing bank stock was habitual and intentional on the part of said assessors, and by a rule prescribed and adopted by said assessors for themselves, and acted upon for many years, namely, from 1870 to 1871, to and including 1880.

4. The court erred in refusing to find in pursuance of plaintiff's nineteenth request, that the average rate of assessment of all personal property, including moneyed capital, assuming that personal property other than bank stock was assessed at its full value,
350 was, in 1873, fifty-eight per cent; in 1874, fifty-four per cent; in 1875, sixty-three per cent of its actual value.

5. The court erred in refusing to find in pursuance of plaintiff's twentieth request that the rate of assessment on the shares of the plaintiff's assignors in the National Albany Exchange Bank during each of said years in proportion to actual value was eighty per cent.

6 The court erred in refusing to find in pursuance of plaintiff's twenty-second request, that in the years aforesaid a large portion of the moneyed capital in the Sixth ward of the city of Albany escaped taxation; that there was no way provided by law by which the asssessors could ascertain the amount of taxable personal property, except bank stock, as to which there was during said years a
351 way provided by law for the assessors to ascertain the amount and value thereof, but that the law relating to the assessment and taxation of bank stock enabled the said assessors to ascertain the amount thereof, and by whom it was held, and to assess the same for taxation, so that no portion thereof could escape taxation.

7. The court erred in refusing to find and decide in pursuance of the third conclusion of law submitted by plaintiff, that the rule adopted and acted upon by the assessors of assessing all bank stock at its par or nominal value, irrespective of actual value, necessarily resulted in assessing the shares of stock in said National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally in the hands of individ-
352 ual citizens of the State of New York, and was therefore a violation of the restriction contained in section 5219 of the Revised Statutes of the United States, and was illegal and void.

8. The court erred in refusing to find that the plaintiff was entitled to recover the several sums demanded in the amended complaint, with interest as therein claimed.

9. The court erred in finding and deciding in pursuance of defendants fifth request, that the assessors did not at any of the times in question habitually or intentionally, or by any rule prescribed by themselves, or by any one whom they were bound to obey, assess the shares of national banks higher in proportion to their actual value than other moneyed capital generally.

353 10. The court erred in deciding in pursuance of defendant's sixth request, that the method pursued by the assessors, in assessing the shareholders of national banks during all the period in question, was generally satisfactory to the owners of national bank stock in the city of Albany, with the exceptions mentioned in said request, and in finding and deciding that such method was pursued by said assessors with no purpose or intention of unduly assessing shares in national banks.

354 11. The court erred in finding and deciding in pursuance of defendants' seventh request, that it was during the time in question the endeavor and intention of the assessors, so far as possible, to assess all personal property that was taxable in the hands of individual citizens in the city of Albany, and at its full value, and that they never neglected or refused to assess such property at such value so far as they were able, and that they never had any intention to permit personal property or moneyed capital in the hands of individual citizens to escape taxation, and at its full share.

12. The court erred in finding and deciding in pursuance of defendants' eighth request, that the moneyed capital in the hands of individual citizens other than the shares of national banks which was at the time in question assessed in the city of Albany, was assessed at its full value.

355 13. The court erred in finding in pursuance of the tenth request of defendants, that the defendants had jurisdiction in the cases mentioned in the complaint to make the assessment upon the shareholders in the National Albany Exchange Bank, by reason of their ownership of the shares of stock therein, and in finding that there was no evidence in the case that all the provisions of the State law relating to said assessments were not fully and strictly complied with.

14. The court erred in deciding in pursuance of defendants' request that the whole complaint should be dismissed with the exception of the fourth count, and that the defendants were entitled to judgment on all the counts except the fourth count.

15. The court erred, in that it did not hold and decide that the mode of assessment adopted and practiced by the said
356 assessors in assessing the assignors of the plaintiff upon their shares of stock referred to in the complaint was unauthorized by any law of the United States, or of the State of New York, and that therefore the said assessors had no jurisdiction to make said assessment, and the same was illegal and void.

And said Edward N. Stanley prays that the judgment aforesaid, or so much thereof as is adverse to the said Edward N. Stanley may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he hath lost by reason of the said judgment.

MATTHEW HALE,
*Attorney for Plaintiff in Error, Albany, N. Y.*

Indorsed: Supreme Court of the United States. Edward N. Stanley, plaintiff in error, against The Board of Supervisors of the County of Albany, defendant in error. Assignment of errors of October Term, 1884. Matthew Hale, attorney for plaintiff in error, 25 North Pearl Street, Albany, N. Y. Due and personal service of a copy of the within assignment of errors admitted this 12th day of December, 1883. Peckham & Rosendale, attorneys for defendant in error.

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SUPREME COURT OF THE UNITED STATES:

EDWARD N. STANLEY, Plaintiff in Error. *vs.* THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendants in Error. } *Joinder in Error.*

And afterward, to wit.: on the second Monday of October, in the year 1884, the said defendants in error, by Rufus W. Peckham, their attorney, freely come into court, and say that there is no error in the record or proceedings aforesaid, or in the giving of judgment aforesaid, and they pray that the said Supreme Court of judicature before the justice thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

RUFUS W. PECKHAM,
358 *Attorney for Defendants in Error.*

Indorsed: Supreme Court of the United States. Edward N. Stanley, plaintiff in error, against The Board of Supervisors of the county of Albany, defendants in error. Joinder in error. Rufus W. Peckham, attorney for defendants in error, Albany, N. Y.

SUPREME COURT OF THE UNITED STATES:

EDWARD N. STANLEY, Plaintiff in Error,
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendants in Error.

359 *To the Clerk of the Supreme Court of the United States:*

SIR. — You will please enter my appearance as attorney and counsel for Edward N. Stanley, plaintiff in error in the above entitled action.

*December* 31, 1883.

Yours, etc.,
MATTHEW HALE,
25 *North Pearl street, Albany, N. Y.*

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SUPREME COURT OF THE UNITED STATES:

EDWARD N. STANLEY, Plaintiff in Error,
*vs.*
THE BOARD OF SUPERVISORS, OF ALBANY COUNTY, Defendants in Error.

*To the Clerk of the Supreme Court of the United States:*

SIR. — You will please enter my appearance as attorney and counsel for the Board of Supervisors of Albany county, above named defendants in error.

360

Yours, etc.,
RUFUS W. PECKHAM,
*Attorney for Defendants in Error, Albany, N. Y.*

121-535

# UNITED STATES SUPREME COURT.

OCTOBER TERM, 1886.

No. 222.

EDWARD N. STANLEY, PLAINTIFF IN ERROR,

*against*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, DEFENDANT IN ERROR.

No. 387.

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,

*against*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, DEFENDANT IN ERROR.

## MOTION TO ADVANCE CASES FOR ARGUMENT.

MATTHEW HALE,
*Attorney for Plaintiff in Error, Albany, N. Y.*

S. W. ROSENDALE,
*Attorney for Defendant in Error, Albany, N. Y.*

UNITED STATES SUPREME COURT.

(Number 1,238, January, 1884.)

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| EDWARD N. STANLEY, Plaintiff in Error, *agst.* THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendant in Error. | *Calendar Number.* (*October Term*, 1886.) 222. |

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UNITED STATES SUPREME COURT.

(Number 1,084, October, 1884.)

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| CHAUNCEY P. WILLIAMS, Plaintiff in Error, *agst.* THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendant in Error. | *Calendar Number.* (*October Term*, 1886.) 387. |

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And now comes Simon W. Rosendale, of Albany, in the State of New York, one of the attorneys of and for the defendant in error in above entitled action, and upon an affidavit hereto annexed, moves this court, that the above entitled causes be advanced and set down for argument, not together, nor together with, but separately from the case of the Mercantile National Bank of the City of New York *v.* the City of New York (which has been already set down by this court for the first day, or an early day, after the February recess), and immediately preceding or succeeding the argument and hearing of said case, or be advanced, so as to be heard immediately preceding or succeeding the hearing and argument and before the decision

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of said case, upon the grounds and for the reasons in said affidavit contained and set forth.

SIMON W. ROSENDALE,
*Attorney for Defendant in Error, Albany, N. Y.*

ALBANY, *January*, 1887.

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IN THE UNITED STATES SUPREME COURT.

EDWARD N. STANLEY,
Plaintiff in Error,
*agst.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,
Defendant in Error.

*Calendar.*
(*October Term*, 1886.)
*No.* 222.

UNITED STATES SUPREME COURT.

CHAUNCEY P. WILLIAMS,
Plaintiff in Error,
*agst.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,
Defendant in Error.

*Calendar.*
(*October Term*, 1886.)
*No.* 387.

STATE OF NEW YORK.

NORTHERN DISTRICT,
CITY AND COUNTY OF ALBANY, } *ss.:*

Simon W. Rosendale, of said city and county of Albany, being first duly sworn deposeth and saith: I am one of the attorneys and counsel for the Board of Supervisors of the county of Albany, the defendant in error, in each of above entitled actions.

These cases are on the calendar of the present Term of this court. The Stanley case is, as I am informed and believe, number 222, and the Williams case, number 387.

The matters involved in these cases have been once before in, and have been adjudicated, by this court on the merits, viz.: the case of Stanley against the Board of Supervisors of Albany county, which is reported in 105 United States Reports at page 305 (to which I hereby refer), and which are the same parties as the first above named case. The court reversed a verdict which plaintiff in error had obtained below. 8

A supplemental decision or opinion was rendered or delivered in said case, to be found at 105 United States Reports, at page 316, to which I hereby refer.

Pursuant to this supplemental decision or opinion, the plaintiff in error, Stanley, amended his complaint. 9

STANLEY
*agst.*
THE BOARD OF SUPERVISORS.

In this action the claim and ground of recovery now is, that the assessment of said bank shares were illegal, in that the assessors of the city of Albany did intentionally, by a rule prescribed by themselves, assess or assume to assess the shares of stock in said National Albany Exchange bank, at a greater rate in proportion to their actual value, than other 10 moneyed capital generally in the hands of individual citizens of the State of New York.

The amount of plaintiff's claim now, with interest, is about the sum of forty thousand dollars.

The Circuit Court gave judgment for defendant, excepting as to the claim for taxes paid by Chauncey P. Williams, one of plaintiff's assignors, who had made a claim for deduction of his debts from the amount assessed against his bank shares. This claim was contained in the fourth count of the complaint on which judgment was awarded for the 11 plaintiff, and as to all the rest there was judgment for defendant. The action was decided by Judge Coxe in March, 1883, and is reported in the 15th Federal Reporter at page 483.

WILLIAMS
*agst.*
12 THE BOARD OF SUPERVISORS.

The plaintiff Stanley, above mentioned, having discontinued as to certain counts of the complaint, the plaintiff Williams began this action to recover the amounts and sums in the counts in the complaint as to which the Stanley action had been discontinued, and in the complaint in this action he set forth the same grounds, but added new grounds and allegations, as to irregularities in the making of the assessment, and as to the oath of the assessors.

13 The amount claimed in this action is about thirty-eight thousand dollars.

The defense here is the same as in the Stanley case, and the further defense that a statute was passed by the Legislature of the State of New York, validating said assessments, and covering the alleged irregularities,

The case was tried before Judge Wallace, without a jury, who decided the case in favor of defendant. Judge Wallace wrote an opinion which is reported in 21 Federal Reporter, page 99.

14 Both of the above entitled cases are brought to recover from the county of Albany, taxes collected by it, for taxation of National Bank shares, and the plaintiffs claim that the assessment was illegal because made at a higher rate than other moneyed capital.

This application to advance these causes for argument is:

*First.* That (it has) they have been once adjudicated on the merits.

*Second.* That a cause which involves a similar question has been advanced by this court, viz.: The Mercantile National
15 Bank of the City of New York against the City of New York, which was advanced and is set down for argument as deponent is informed and believes, for the first, or an early, day, after the February recess in 1887.

Deponent therefore makes application that these causes may be advanced and set down for argument, not together, nor together with, but separately from, the case of the 16
Mercantile National Bank of the City of New York aforesaid, and immediately preceding or succeeding the said case; or be advanced so as to be heard immediatety preceding or succeeding, and before the decision of said case.

SIMON W. ROSENDALE.

Sworn to before me this 11th day of January, 1887.

ALBERT HESSBERG, 17
[L. S.] *Notary Public, Albany County, N. Y.*

UNITED STATES SUPREME COURT.

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| EDWARD N. STANLEY, Plaintiff in Error, *agst.* THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY. | *No.* 222. |
| CHAUNCEY P. WILLIAMS, Plaintiff in Error, *agst.* THE SAME. | *No.* 387. |

The plaintiffs in error in the above causes, by Matthew Hale, their attorney and counsel therein, come and say that the above causes involve questions separate and distinct from those involved in the case of the Mercantile National Bank *v.* the City of New York, although they to some extent involve the questions which are understood to arise in the said Mercantile National Bank case; and that the second above named cause (number 387) while it involves the same questions as the first above named cause (number 222) also presents, other and additional questions; and that therefore the said two causes cannot properly in the judgment of said counsel be argued together; but that two distinct arguments will be required therein. The plaintiffs in error therefore, while they do not object to the advancement of the said causes as asked for by the counsel, for the defendant in error, insist that the same should be argued each as a separate and distinct cause.

Dated *January*, 12, 1887.

MATTHEW HALE,
*Attorney and Counsel for Plaintiffs in Error.*

Office Supreme Court U. S.
FILED.
MAR 4 1887
JAMES H. McKENNEY.
CLERK.

121-535

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1886.

No. 222

HATTIE E. STANLEY, EXECUTRIX, ETC., PLAINTIFF IN ERROR.

*vs.*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

## BRIEF OF PLAINTIFF IN ERROR.

MATTHEW HALE,
*Attorney and of Counsel for Plaintiff in Error.*

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1886.

## No. 222

HATTIE E. STANLEY, EXECUTRIX, ETC., PLAINTIFF IN ERROR.

*vs.*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

BRIEF OF PLAINTIFF IN ERROR.

MATTHEW HALE,
*Attorney and of Counsel for Plaintiff in Error.*

# SUPREME COURT OF THE UNITED STATES.

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HATTIE E. STANLEY, as Executrix of the Last Will and Testament of EDWARD N. STANLEY, Deceased,

*Plaintiff in Error.*

AGAINST

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

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## BRIEF OF PLAINTIFF IN ERROR.

*In error to the Circuit Court of the United States for the Northern District of New York.*

### STATEMENT.

This action was brought by Edward N. Stanley, a citizen of the State of Illinois, as assignee of certain stockholders of the National Albany Exchange Bank, to recover back certain taxes alleged to have been wrongfully collected from them upon their shares in said bank during the years 1874 to 1879, both inclusive, and paid into the treasury of the county of Albany.

The original complaint contains twelve counts. The first count is contained in the printed transcript of the record at folios 138 to 148. All the other counts, except the fourth, were substantially the same as the first, except as to the names of the stockholders and the amounts assessed and collected. The fourth count has not been amended, but is in the amended complaint identical with the fourth count of the original complaint. The grounds on which a recovery was claimed in the original complaint were therein stated in each count except the fourth, as follows:

And this plaintiff further says upon information and belief, that the said act of the Legislature of the State of New York, chapter 761 of the Laws of 1866, was and is in conflict with the provisions of the laws of the United States, and especially in conflict with the provision of the laws of the United States that taxation by State

authority of shares of stock in banking associations, incorporated under the act of Congress above mentioned, shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, for the reason, among others, that the said act of the Legislature of the State of New York does not permit the debts owing by the owners of such bank stock to be deducted from the value of said stock in the assessment thereof, although such deduction of the debts of the owner was, at the time of said assessment, and still is permitted and required by the laws of the State of New York to be made from the value of every kind of personal property and moneyed capital other than bank stock, in assessing the same for the purpose of taxation, and the said act of the Legislature of the State of New York was and is therefore void, so far as it did or does authorize or purport to authorize, the assessment and taxation of shares in banking associations, incorporated under the laws of the United States.

And the plaintiff also says, upon information and belief, that the assessment of said shares of stock in said banking association by said board of assessors was at a greater rate than was assessed by said board of assessors upon shares of stock in a bank organized under the laws of the State of New York, in said Sixth ward, and was at a greater rate than was assessed by said board upon other moneyed capital in the hands of individual citizens of the State of New York, and that for these reasons said assessments of said shares of stock, and the levy of tax thereunder, were illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belonged of right to said shareholders, named therein, and not to said county.

Upon the first trial, which took place in October, 1880, a judgment was recovered in favor of the plaintiff for the whole amount claimed, upon the ground first above stated, namely, that the act of the Legislature above referred to was in conflict with the laws of the United States, in that it did not permit a deduction for debts as above set forth.

The second ground stated in the original complaint, namely, that the assessment of the shares was at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of New York, was not considered by the court on the first trial, it having been determined that the plaintiff was entitled to a recovery on the first ground. The defendant brought the judgment of the Circuit Court for review, by writ of error, to this court where the judgment was reversed (except as to the fourth count), this court deciding that the State law under consideration, while it was in conflict with the act of Congress, so far as it did not permit a stockholder of a national bank to deduct

the amount of his debts from the assessed value of his stock, was not rendered void by reason of such conflict; and that where the stockholder has no debts to deduct, the prescribed mode of assessment was valid and he could not recover the tax paid pursuant thereto.

See Supervisors v. Stanley, 105 U. S., 305.

The opinion of the court, as first announced, was that judgment be rendered for the plaintiff on the fourth count of the complaint, and on all the other counts for the defendant; but upon the attention of the court being called to the fact that it appeared from the bill of exceptions in the case, that evidence was given upon the subject of other allegations contained in the complaint upon which the court did not pass, the first opinion announced was "so far modified as to permit the court below, in its discretion, to hear evidence on that point (the alleged assessment of the shares at a *greater rate* than was assessed upon other moneyed capital, etc.), and if necessary to allow an amendment to the pleading to present it properly."

105 U. S., 318.

The mandate of this court, therefore, as modified April 24, 1882, permitted the Circuit Court "in its discretion to amend the pleadings and to hear evidence in regard to the issue or issues in the case not disposed of by the findings of fact made by the court in the former trial, and not inconsistent with the opinion in this case." (See Record, fol. 4.)

Under this mandate application was made to the Circuit Court, and all the counts of the complaint (except the fourth, which remained the same as before), were amended. The ground on which relief is now sought is stated in each count of the complaint except the fourth, as follows:

And plaintiff says, upon information and belief, that the said pretended assessment was illegal and void. That under the Constitution and laws of the United States said shares of stock were not liable to assessment and taxation by State authority, except so far as permission to make such assessment was given by section 5219 of the Revised Statutes of the United States, which provides that nothing therein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but that the legislature of each State may determine and direct the

manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere.

And plaintiff further says, upon information and belief, that the said assessors did intentionally, by a rule prescribed by themselves, assess or assume to assess the said shares of stock in said National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally, in the hands of individual citizens of the State of New York. That the rule adopted by said assessors was to assess all shares of stock in State and National banks in said city at par, irrespective of their actual or market value, making the requisite deduction for real estate owned by said banks. That such rule necessarily resulted in imposing upon the shares of said National Albany Exchange Bank a greater rate of taxation than was assessed upon other moneyed capital generally. That there were in said Sixth ward, of said city, at the time of said assessments, several banks, State and National, and that the actual value of the stock of said banks varied, that of the shares of stock in the said National Albany Exchange Bank being considerably less than the stock of most of the other banks in the said city.

That there was a large amount of moneyed capital in said city of Albany and in said Sixth ward, in the year aforesaid, in the hands of individual citizens of the State of New York, and that such moneyed capital was generally assessed at a less rate than the said shares of stock in said National Albany Exchange Bank. That the rule adopted as aforesaid by said board of assessors was not authorized by the laws of the State of New York, and was in violation of the provisions of section 5219 of the Revised Statutes of the United States; and that, for the reasons above set forth, the said pretended assessment was illegal and void, and the money thereby collected was wrongfully collected and paid into the county treasury, and belongs of right to the said Chauncey P. Williams and not to said county.

Afterwards, upon application to the court the action was discontinued as to six of the twelve counts therein contained, leaving the case to proceed as to the other counts of the complaint. The counts now remaining are those claiming to recover for the taxes of the years 1873, 1874 and 1875.

The case came on for second trial under the amended pleadings, in March 1883, before Hon. Alfred C. Coxe, district judge of the northern district of New York, without a jury, a jury having been

duly waived by written stipulation filed. (Fol. 167.) After hearing the proofs and allegations of the parties, the court rendered its decision giving judgment in favor of the plaintiff for the amount claimed in the fourth count of the complaint, amounting at the date of the decision to $2,035.30, together with the costs of the action accruing subsequent to the order of discontinuance, but holding that the plaintiff was not entitled to recover upon any other count of said amended complaint. (See fols. 272–276.)

The judgment rendered in favor of the defendant upon this decision, has been brought by the plaintiff to this court for review upon writ of error. Since the case was advanced and set down for argument the original plaintiff in error has died, and this executrix has been substituted.

## ASSIGNMENT OF ERRORS.

*The plaintiff specifies the following as the errors asserted and intended to be urged upon this argument:*

*First.* The court erred in deciding that the plaintiff failed to establish the allegations in the complaint, that the several assessments therein referred to were at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of the State of New York.

*Second.* The court erred in deciding that the plaintiff was not entitled to recover upon any other count of the amended complaint than the fourth.

*Third.* The court erred in refusing to find and decide, in pursuance of the third conclusion of law submitted by plaintiff, that the rule adopted and acted upon by the assessors of assessing all bank stock at its par or nominal value, irrespective of actual value, necessarily resulted in assessing the shares of stock in said National Albany Exchange Bank at a greater rate in proportion to their actual value than other moneyed capital generally in the hands of individual citizens of the State of New York, and was, therefore, a violation of the restriction contained in section 5219 of the Revised Statutes of the United States, and was illegal and void.

*Fourth.* The court erred in refusing to find in pursuance of plaintiff's twenty-second request, that in the years aforesaid a large portion of the moneyed capital in the Sixth ward of the city of Albany escaped taxation; that there was no way provided by law by which the assessors could ascertain the amount of taxable personal property, except bank stock, as to which there was during said years a way provided by law for the assessors to ascertain the amount and value thereof, but that the law relating to the assessment and taxation of bank stock enabled the said assessors to

ascertain the amount thereof, and by whom it was held, and to assess the same for taxation, so that no portion thereof could escape taxation.

*Fifth.* The court erred in sustaining the objection made by defendant's counsel to the proof offered by plaintiff that there was no certificate attached to the assessment-roll of the Sixth ward for the years 1874 and 1875; and that the only oath annexed thereto or written thereon, was that set forth at folios 269 and 270 of the record; and also that the law of the State of New York required an oath or certificate substantially different from the oath, in fact taken and annexed to said assessment-roll; which evidence was offered for the purpose of showing that there was no valid assessment of any property, real or personal, in said Sixth ward for said years 1874 and 1875; and that, therefore, the assessment imposed upon and the taxes collected from the stockholders of said National Albany Exchange Bank, were at a greater rate than was imposed upon other moneyed capital in said years.

*Sixth.* The court erred in refusing to find that the plaintiff was entitled to recover the several sums demanded in the amended complaint, with interest as therein claimed.

*Seventh.* The court erred in finding, in pursuance of the tenth request of defendants, that the defendants had jurisdiction in the cases mentioned in the complaint to make the assessment upon the shareholders in the National Albany Exchange Bank, by reason of their ownership of the shares of stock therein, and in finding that there was no evidence in the case that all the provisions of the State law relating to said assessments were not fully and strictly complied with.

*Eighth.* The court erred, in that it did not hold and decide that the mode of assessment adopted and practiced by the said assessors in assessing the assignors of the plaintiff upon their shares of stock referred to in the complaint was unauthorized by any law of the United States, or of the State of New York, and that therefore the said assessors had no jurisdiction to make said assessment, and the same was illegal and void.

*Ninth.* The court erred in that it did not find and decide that the assessments in question were illegal and void and in violation of section 5219 of the Revised Statutes of the United States, for the reason that under the law of the State of New York, and under the system adopted by the assessors of the city of Albany, a very material part of the moneyed capital in the city of Albany, and in the sixth ward thereof, escaped assessment and taxation, while under the laws of the State of New York, and under the system adopted by the said assessors, no National Bank stock could or did escape from assessment and taxation.

*Tenth.* The court erred in not deciding that the assessments in question were void, because in violation of the fourteenth amendment to the Constitution of the United States, because by such

assessments so made as aforesaid, the stockholders of said Exchange Bank (the assignors of the plaintiff) were denied the equal protection of the laws.

## POINTS OF PLAINTIFF IN ERROR.

FIRST. THE COURT BELOW ERRED IN HOLDING AND DECIDING THAT THE PLAINTIFF HAD FAILED TO ESTABLISH THE ALLEGATIONS IN THE COMPLAINT, THAT THE ASSESSMENTS WERE AT A GREATER RATE THAN WAS ASSESSED UPON OTHER MONEYED CAPITAL IN THE HANDS OF INDIVIDUAL CITIZENS OF THE STATE; AND ALSO IN REFUSING TO FIND, AS REQUESTED BY THE PLAINTIFF, THAT THE RULE ADOPTED AND ACTED UPON BY THE ASSESSORS OF ASSESSING ALL BANK STOCK AT ITS PAR OR NOMINAL VALUE, IRRESPECTIVE OF ITS ACTUAL VALUE, NECESSARILY RESULTED IN ASSESSING SHARES OF STOCK IN THE NATIONAL ALBANY EXCHANGE BANK AT A GREATER RATE IN PROPORTION TO THEIR ACTUAL VALUE THAN OTHER MONEYED CAPITAL, AND WAS, THEREFORE, A VIOLATION OF THE RESTRICTION CONTAINED IN SECTION 5219 OF THE REVISED STATUTES.

1. The law applicable to this case, as laid down by this court when it was here before, is as follows:

"But if it is intended to allege that, apart from the question of the right of the shareholder to deduct for his debts — a question which, in this case, *was disposed of* and was in issue — it can be proved that the assessors habitually and intentionally, or by some rule prescribed by themselves, or by some one whom they were bound to obey, assessed the shares of the national banks higher in proportion to their actual value than other moneyed capital generally, then there is ground for recovery, and a hearing as to that should be granted."

105 U. S., 318.

The above doctrine was the same as that laid down by this court in the Ohio cases, namely, that the systematic and intentional valuation of other moneyed capital by the taxing officers below its value, while the shares in question are assessed at their full value, or at a greater rate, is a violation of the act of Congress which prescribes the rule by which they shall be taxed by state authority.

Pelton v. National Bank, 101 U. S. 143.
Cummings v. National Bank, 101 U. S. 153.

The doctrine may be correctly stated in different language as follows: *Where the habitual and intentional action of local assessors in assessing the shares of a national bank is in violation*

*of the restrictions imposed by the laws of the United States, it is none the less illegal and void because it also violates a State law.*

2. Two questions, therefore, arise, which are to be considered here: (1.) Were the shares of the Albany Exchange Bank in fact assessed at a greater rate than other moneyed capital in the hands of individual citizens of the Sixth ward of the city of Albany? and (2.) If this was so, was it the result of the systematic and habitual action of the assessors; the result of "some rule prescribed by themselves or by some one whom they were bound to obey?"

(*a.*) *There can be no question that the shares of the national bank in question were assessed at a greater rate than "other moneyed capital."*

The facts and figures, as proved without contradiction and, found by the court, show this beyond dispute.

The total assessment of personal estate in the Sixth ward of the city of Albany, in the year 1873, was $3,304,800. Of this amount the assessment upon State and National bank stock was $2,901,550; upon other personal property, $403,250. (See eleventh finding, fol. 285.)

In 1874 the total personal assessment in said ward was $2,863,550; bank stock, State and National, $2,446,550; other personal property $417,000. (See twelfth finding, fol. 286, 287.)

In 1875, the entire personal assessment was $2,613,050; bank stock, State and National, $2,259,550; other personal property $353,500. (Thirteenth finding, fol. 288.)

The actual value of the bank stocks, State and National, thus assessed in 1873, was $5,294,050. (Fourteenth finding, fols. 289, 290.) Add to this the other personal property, assuming that to be assessed at full value, $403,250, and we have in full $5,697,500, assessed at $3,304,800, the average assessment being about fifty-eight per cent of the actual value.

In 1874, the actual value of bank stock assessed was $4,829,050. (Fifteenth finding, fols. 290, 291.) Add to this the other personal property, assuming it to be assessed at full value, $417,000, and we have $5,246,050, assessed at $2,863,550, a little less than fifty-five per cent of the actual value.

In the year 1875 the total value of the bank stock so assessed was $3,762,050. (Sixteenth finding, fol. 291.) Add to this other personal property, assuming it to be assessed at full value,

$353,500; total value of property assessed $4,115,550, assessed at $2,613,050, about sixty-three per cent of the actual value.

During all this time the rate or percentage of assessment of the shares of the National Albany Exchange Bank, in proportion to actual value was eighty per cent. (See tenth and seventeenth findings.) Taking bank stock alone into consideration, we find that two banks of small capital, one State and one National bank, (the Albany County and the Union) were assessed at a greater rate than the Albany Exchange Bank; (see seventeenth finding), but the actual value of the stock of these two banks, thus assessed at a greater rate than the Albany Exchange was in 1874.

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|---|---|
| Union National | $250,000 |
| Albany County | 200,000 |
| | $450,000 |

The actual value of the stock in the other banks, assessed at a less rate in proportion to actual value than the stockholders of the National Exchange amounted to:

| | |
|---|---|
| Mechanics and Farmers' | $937,000 |
| Merchants' National | 380,000 |
| First National | 450,000 |
| Albany City National | 450,000 |
| New York State National | 567,000 |
| National Commercial | 1,250,000 |
| In all | $4,034,000 |

See fifteenth finding, fol. 290.

The rate or percentage of assessments to actual value, was less in all the last-named banks than in the Exchange Bank, ranging from thirty-five per cent in the case of the Mechanics and Farmers' Bank, to seventy-five per cent in the case of the Albany City Bank. (Finding seventeenth and eighteenth, fols. 292, 293.)

If the shareholders of these last named banks had been assessed at the same rate with the Exchange Bank, eighty per cent, the assessment would have been as follows:

Mechanics and Farmers', $660,000, or $380,000 more than the actual assessment.

National Commercial, $1,000,000, or $550,000 more than the actual assessment.

Merchants' National $304,000, or $144,000 more than the actual assessment.

New York State National, $453,600, or $131,600 more than the actual assessment.

Albany City National, $360,000, or $90,000 more than the actual assessment.

First National, $360,000, or $90,000 more than the actual assessment.

In all, $1,385,000 more than the actual assessment.

It appears, therefore, upon the uncontradicted and indisputable facts as found by the court and as stated in the bill of exceptions:

(1.) That while the actual rate of assessment upon actual valuation in the Sixth ward during the three years in question, taking all personal property, including bank stock and other moneyed capital into consideration, was in 1874 about fifty-five per cent; in 1873, about fifty-eight per cent; and in 1875 about sixty-three per cent, during all these years the rate imposed upon the stockholders of the National Exchange Bank was about eighty per cent of actual value.

(2.) That of the entire personal property, including moneyed capital, which was subjected to assessment at some rate being in 1873 and 1874 about $5,000,000, over $4,000,000 thereof was assessed at a substantially less rate than the shares of the Albany Exchange Bank. This is saying nothing about the vast amount of moneyed capital which escape taxation altogether, and was not entered upon the assessment-rolls, which will be considered in a subsequent point.

NOTE.—It is not claimed that the above figures are exactly correct, the deductions for real estate, the amounts of which are stated at folio 247, making a difference as to the percentage of actual personal assessment; but exactness in computation would make very slight difference in the figures, and would not change substantially, the result.

4. There can be no question that the stock in other banks, State and National, may be considered as "other moneyed capital" in inquiring whether the taxation of the shares of this bank was in violation of section 5219. The rights of the assignors of the plaintiff were none the less violated by an assessment at a greater rate than shares in other National banks, than by such assessment

at a greater rate than the shares of State banks, or of any other moneyed capital. Under the restriction in section 5219, the State authorities have no right to discriminate against *any* National bank. The restriction applies to each and every bank. The only question is whether either a material part of other moneyed capital in the assessment district escapes taxation, or is assessed at a substantially lower rate than the shares of the bank under consideration.

See Boyer v. Boyer, 113 U. S. 689.

5. *This unequal assessment was habitual and intentional on the part of the assessors and by a rule prescribed by themselves. This is shown by clear and uncontradicted evidence.*

(*a.*) Mr. Weaver, who was assessor during the entire period from 1871 down to the time of his examination in 1883, testified "that during that period, the assessors of said city had assessed bank stock at its par value, making the requisite deductions for the assessed value of the real estate of the bank, without reference to the actual value of such stock, except to ascertain that it was worth as much as par." He also testified that the shareholders in banks generally, in said city, except those of the Exchange Bank, were satisfied with this mode of assessing bank stock. (Fol. 248.) Upon his cross-examination he said that during said years, the assessment made upon the stockholders of said National Albany Exchange Bank were not made intentionally at a greater rate than upon other moneyed capital in the hands of individual citizens; that there was no intention to discriminate against National banks, etc., and that the assessments were made and the assessors acted in good faith. (Fol. 249.) But the record shows, that, upon his redirect examination, he testified as follows:

That they intended to assess all bank shares at par, as they did assess them, and that they intended to assess a share of the National Albany Exchange Bank at the same amount as they did that of a share in the Mechanics and Farmers' Bank, and at the same amount that they did a share of the National Commercial Bank and the National State Bank, *although he had reason to believe that the value of the shares in the Mechanics and Farmers' Bank was much greater than the value of the shares in the National Albany Exchange Bank.* (Fol. 250.)

(*b.*) It appeared also that, in 1874, the shareholders of the Exchange Bank sued out a writ of *certiorari* in the Supreme Court

of the State of New York, to which the assessors made a return which may be found at folios 251 to 258. This return, which was dated November 10, 1874, contained the following statement :

That this board did not make any inquiries or investigation as to the actual or market value of the shares of the stock of said banks (further than to satisfy themselves that such value was more than their par value), and they investigated then to ascertain the par value of such shares, and this board decided to and did adopt the nominal or par value of said shares of stock as the *standard of value* in assessing the shareholders on said shares of stock. (Fol. 254).

The *certiorari* proceedings in question related particularly to two banks, the National Exchange Bank, and the Mechanics' and Farmers' Bank, a State bank, and the return also contained the following statement in regard to the assessments in question :

That the assessment upon the shareholders of bank stock in the two banks aforesaid, is made upon the nominal or par value of said shares, deducting from said nominal or par value such sum as in the same proportion to such nominal or par value as is such assessed valuation of said real estate. And the SAME RULE is followed in the assessment of all bank shares throughout the city. It is supposed generally that the shares of the Mechanics and Farmers' Bank are of greater value than those of the National Albany Exchange Bank, but the only knowledge of the board of assessors upon that point is the general belief in the city that the shares of the one bank are more valuable than those of the other. (Fol. 257.)

(*c*) It will be seen, therefore, that the assessors did not hesitate at that time to speak of their mode of assessment as being under *a rule*, although the learned judge who tried the case below, hesitated so to characterize it. (See ninth request, fol. 283.) The court, however, did make the following finding at the request of plaintiff to be found at folio 282 :

*Eighth.* That during the said years the assessors of the city of Albany assessed the shares of all the said banks and banking associations at their par value, deducting from such par value the assessed value of the real estate of each bank, without reference to the actual value of such shares.

I so find. A. C. C.

(*d.*) This course of action was taken by the assessors notwithstanding the protest of the shareholders in the Exchange Bank. This was found by the court in the following language:

*Nine and a-half.* That such mode of assessment was not consented to by the assignors of the plaintiff, or by the officers of the

National Albany Exchange Bank, but was objected to by said officers, who insisted that it was the duty of the assessors to assess all property, including bank stock, at its true and actual value.

I so find. A. C. C. (Fol. 283.)

See also the letter of Mr. Williams to the assessors dated September 19, 1872, in which he says:

I have not made the extension, for the reason that we shall claim that our shares be placed upon the tax-roll at a valuation somewhat nearer than heretofore the assessed valuation of other property. (Fol. 260.)

Also his letter of September 4, 1873, in which he says:

But I hereby especially protest against the shares being included in the assessment-roll at this valuation, unless other bank stocks, and other property, generally, shall be assessed at corresponding values in proportion to *real value*. (Fol. 262.)

(*e.*) This course was also repeatedly condemned by the courts of the State of New York. In the *certiorari* proceeding, the Supreme Court of the State of New York say:

The assessments have not been made against the shareholders "on the *value* of their shares of stock" as the law requires, but were made as the fact is certified in the return, at par value, without regard to the true value, in excess of par. Such basis of assessment was in manifest disregard of these plain directions of the statute. (2 Hun, 585.)

It is an undisputed fact that appearing in the return, that the board of assessors, in the assessment of all bank stock in the city of Albany, adopted as their standard of valuation the par value of the shares whenever the actual or market value was equal to or exceeded the par value, and regardless of the actual value whenever it exceeded par. *This was a palpable violation of the laws of this State*, requiring and regulating the assessment of property for the purpose of taxation * * * * * The conclusion is inevitable that it was the duty of the defendants to have assessed the shares of stock in all of the banks at their true value instead of their par value, and that *all of the assessments are unauthorized and erroneous* where the actual value of the stock is above par.

People v. Assessors, 2 Hun 587, 588.

The Court of Appeals of the State of New York, in the case of Williams v. Weaver, in which the assessors of the city of Albany were defendants say:

It may be assumed as entirely clear that the basis of assessment against the owners of shares of stock of the Albany National Exchange Bank was erroneous. These assessments were not made on the value of the shares of stock, as required by law (Session Laws

1866, chap. 761), but were made at the "par value" without regard to their real value in the market The effect of such a valuation necessarily *must be to make great inequality, and as the record in this case shows, to impose upon the shareholders whom the plaintiff represents a greater burden of taxation than that which would properly belong to them.*

Miller, J., 75 N. Y., 30, 33.

This mode of assessing, notwithstanding the objections and protests of the shareholders of the Exchange Bank, and the repeated admonitions of the State Courts, was persisted in by the assessors, apparently for the reason stated by Mr. Weaver, at folio 248, "that the shareholders in banks generally in said city, except those of the National Albany Exchange Bank, were satisfied with this mode of assessing bank stock," from 1871 down to and including 1880 without variation or modification. It was spoken of by the assessors themselves in their return to the *certiorari* in 1874, as a "RULE." It cannot be considered anything else than a habitual and intentional course, and a rule prescribed for themselves by the assessors. (*f.*) This rule, although not sanctioned by the State law any more than by the law of the United States, had the force of law in the city of Albany. The New York Supreme Court, in the *certiorari* case, admitted that it was powerless to correct the error. The Court of Appeals, in Williams v. Weaver (75 N. Y.), held that the assessors were not personally liable for their disregard of the law. It was, however, a palpable violation, as has been shown of the restriction contained in section 5219 of the Revised Statutes, and, therefore, the assessments made thereunder were illegal and void.

SECOND. THE RULE ADOPTED BY THE ASSESSORS AS ABOVE STATED, WAS IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, IN THAT IT PRACTICALLY DENIED TO THE SHAREHOLDERS OF THE EXCHANGE BANK THE "EQUAL PROTECTION OF THE LAWS."

These shareholders, who are represented here by the plaintiff, were compelled to pay a much greater rate of taxation upon property of precisely the same nature, than were the shareholders of the other State and National banks in the same taxing district. They were not "equally protected" from excessive exaction in the way of taxation.

It is deemed unnecessary to discuss here the effect of the portion of the fourteenth amendment referred to, inasmuch as it has been so thoroughly and ably discussed in this court by learned and distinguished counsel and has been very thoroughly considered by some, if not all the justices of the court.

See County of Santa Clara v. Southern Pacific R. R. Co., 18 Fed. Rep. 385.
County of San Mateo, v. same, 13 id., 147, 722.

THIRD. THE PROOF IN THIS CASE, TAKEN IN CONNECTION WITH THE LAWS OF THE STATE OF NEW YORK, WHICH ARE DEEMED TO BE IN EVIDENCE HERE, AND MAY, UNDER THE STIPULATION BE REFERRED TO ON ANY ARGUMENT OF THE CASE, (FOLS. 321, 322,) SHOW THAT THERE WAS PRACTICALLY AN UNLAWFUL DISCRIMINATION MADE AGAINST NATIONAL BANK STOCK DURING THE YEARS IN QUESTION IN THE CITY OF ALBANY.

It appeared by the testimony of Mr. Weaver, the assessor, that he did not know of any moneyed capital which was assessed as such during said years in the said Sixth ward of the city of Albany, except bank stock, State and National; that when they assessed individuals for personal property, it included everything, and they could not say whether it was moneyed capital or what kind of property it was (fol. 266); that he had not the least idea that they did in fact assess all the moneyed capital in the Sixth ward during the years in question; one reason for this was that people swore off their assessments, and another reason was that there was *no way provided by law* by which the assessors could ascertain the exact or the approximate amount of taxable personal property which citizens had, *unless it was bank stock*; that there was no species of personal property *except bank stock*, as to which, so far as he knew, there was a way provided or a mode exercised by the assessors to get at the precise truth about it, except that there was a law requiring corporations to make statements. (Fol. 267.)

It appears by this testimony that it was impossible for the assessors to ascertain or to assess all the taxable moneyed capital in the city. The laws for the assessment of personal property in the city of Albany, which do not differ materially from the laws relating to the rest of the State, provide no method for ascertaining the full amount of the property of the taxpayer except in the case

of bank stock. This is evident from the following extracts from chapter 86 of the Laws of 1850, relating to the assessment and collection of taxes in the city of Albany:

§ 5. Between the third Tuesday of April and the first day of September in every year, the board of assessors of the city of Albany shall ascertain, by diligent inquiry, the names of all taxable inhabitants in the several wards of the said city, and also all the taxable property, real and personal, within the same.

§ 6. They shall prepare an assessment roll for each of the wards in the said city, in which they shall set down in separate columns, and according to the best information in their power:

1. In the first column the names of all the said taxable inhabitants of the ward, and also the names of all other persons having real estate belonging to them in the ward.

* * * * * * * *

4. In the fourth column, and opposite the name of each inhabitant of the ward, the full value of all the taxable personal property owned by such inhabitant, after deducting the just debts owing by him, and his property invested in any stock of any corporation or association liable to be taxed for such stock as capital or otherwise.

Under this and similar laws of the State, it is noticeable that the great bulk of moneyed capital in the State, as well as in Albany, other than bank stock, escape taxation. The following extracts from the report of the New York State assessors, which are public documents, made in pursuance of law, and on file in the Secretary of State's office, show to how great an extent personal property in the State of New York escapes taxation:

"From our examinations, we are satisfied that less than fifteen per cent of the personal property of the State, liable to taxation, find a place on the rolls of the assessor, and of mortgages, not over five per cent of the value is assessed."

Report of State Assessors for the year 1873, p. 6, made January 21, 1874.

"As a general rule, we find, all over the State, that the assessment of personal property is made without regard to the law."

Id., p. 7.

"It is safe to assert that not three per cent of all the money loaned on bond and mortgage in the State is assessed, and unless some efficient remedy is applied, the assessment of bonds and mortgages will soon be a thing of the past."

State Assessor's Report for 1877, p. 8.

"Banking capitol is assessed fully eighty-five per cent of its nominal value, while it is quite evident that *other personal property is assessed at an average of less than ten per cent.*"

Report for 1880, p. 7.

FOURTH. BY THE STATUTES OF THE STATE OF NEW YORK, A VAST AMOUNT OF MONEYED CAPITAL IS AND WAS DURING THE YEARS IN QUESTION, EXEMPT.

The owner or holder of stock in all other corporations than banks which are liable to taxation on their capital, was and is exempt from taxation as an individual for such stock.

1 R. S. of N. Y., 387, 388, sec. 7.

And all moneyed corporations deriving an income from their business were and are liable to taxation on their capital stock in the manner prescribed in the Revised Statutes.

1 R. S. of N. Y., 414, sec. 1.

*It is supposed that this point will have been very thoroughly and elaborately argued in the cases arising in the city of New York, which are set down for argument prior to this case, and the point is, therefore, not elaborated here; but we ask the court to consider as applicable to this case, the arguments which are made in the New York cases.*

FIFTH. THE COURT ERRED IN EXCLUDING THE EVIDENCE OFFERED BY THE PLAINTIFF TO SHOW THAT THERE WAS NO CERTIFICATE CONNECTED WITH THE ASSESSMENT-ROLL OF THE SIXTH WARD FOR THE YEARS 1874 AND 1875; AND THAT THE ONLY OATH ANNEXED THERETO WAS THAT SET FORTH AT FOLIO 269 OF THE RECORD.

*Such evidence was offered in order to show that there was no valid assessment of any real or personal property in the Sixth ward of the city of Albany, during the years in question; and, that, therefore, the assessment imposed upon the tax collected from stockholders of the Exchange Bank, were at a greater rate than was imposed upon other moneyed capital in said years.* (Fol. 271.)

The evidence was objected to as not being within the issue presented by the pleadings, and under a stipulation which appears on the record, marked stipulation No. 2, which is to be found at folios 163 and 164 of the record.

In order to understand this stipulation and the condition of the pleadings at the time the offer was made, it is necessary to refer briefly to the history of the case.

There was no allegation in the original complaint in regard to any defective oath attached to the assessment-roll. The fact that the assessors had adopted a different form of oath from that prescribed by the statute was not discovered until after that action was brought and judgment was recovered therein. After the case was sent back to the Circuit Court by the mandate of this court, application was made to amend the complaint by alleging among other things, the defective oath, as rendering the assessment void. This application was denied by the court upon the ground that it was not permissible under the mandate of the Supreme Court. An amendment to the complaint was, however, allowed, in which it was alleged, as above stated, that the assessments in question were at a greater rate in proportion to actual value than other moneyed capital in the hands of individual citizens; and that there was a large amount of moneyed capital in the city of Albany in the hands of individual citizens which was generally assessed at a less rate than the shares of stock in question; and generally that the assessment was at a greater rate, in proportion to actual value, than other moneyed capital. The counsel for the defendant apparently feared that these allegations might be deemed sufficient to admit proof of the defective oath as evidence that the assessment was for this reason illegal, and, in order to avoid an application to the court respecting this, "stipulation No. 2" was made, by which it was stipulated that on the trial plaintiff would not claim that the amended complaint, so far as the form of action was concerned, was in any way different from the form existing in the complaint; and that plaintiff would not claim that he had any right under the amended complaint to prove the failure of the assessors to take the proper oath, unless he had such right under the allegations made to show that plaintiff and his assignors were assessed upon their bank stock at a greater rate than was assessed upon other moneyed capital. (Fol. 164.) The offer of the evidence was, therefore, confined to the purpose of establishing the allegations as to the "*greater rate*," by showing that there was no valid assessment of any other property; that, therefore, all other personal property, including moneyed capital in the city of Albany,

escaped any legal assessment, and that the assessment imposed by the assessors upon these shares was, therefore, illegal and void.

*The testimony was admissible for the purpose suggested.*

1. There can be no dispute that the testimony, if received, would have shown that there was no valid assessment upon any other moneyed capital or other property in the year referred to.

(*a.*) The law relating to taxation in the city of Albany provided as follows:

§ 19. If no objections be made to their assessments, or immediately after they shall have disposed of the objections, the board of assessors, or a majority of them, shall sign the assessment rolls of the respective wards of the city, and shall attach thereto a certificate, which shall also be signed by them, in the following form: "We do severally certify that we have set down in the foregoing assessment-roll, all the real estate situate in the (first or other ward as the case may be), according to our best information; and that with the exception of those cases in which the value of the said real estate has been sworn to by the owner or possessor thereof, we have estimated the value of the said real estate *at the sums which a majority of the board of assessors have decided to be the true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor;* and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in the said roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable; and that, with the exception of those cases in which the value of such personal estate has been sworn to by the owner or possessor, we have estimated the same according to our best information and belief."

§ 20. The assessment-rolls thus certified, shall, on or before the first day of November in each and every year, be delivered by the board of assessors to the supervisors of the several wards in the city of Albany respectively, who shall deliver the same to the board of supervisors at their next meeting. (Chap. 86, Laws of 1850, §§ 19 and 20.)

(*b.*) In 1851, a general law was passed to amend the law for the assessment and collection of taxes, which provided as follows:

§ 8. When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before one of the justices of the town or city in which they shall reside, and shall severally make and subscribe before such justice, an oath in the following form:

We, the undersigned, do severally depose and swear that we have set down, in the foregoing assessment roll, all the real estate situated in the (town or ward, as the case may be) according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate *at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor;* and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief, which oath shall be written on said roll, signed by the assessors, and certified by the justice, and shall be in place of the official certificate now required by law; and every assessor who shall wilfully swear false in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties, of wilful and corrupt perjury.

Chap. 176, Laws of 1851, sec. 8.

This law of 1851, though a general law, is probably applicable to the city of Albany as well as to the rest of the State. At least the practice has been since the passage of this law to attach the oath, instead of the certificate, to the assessment-roll. The assessors of Albany, instead of following the form prescribed either by the Law of 1850 relating to the city of Albany, or by the general law of 1851, annexed to their assessment-rolls, an oath, a copy of which is found at folios 269, 270 of the record, and is as follows:

We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situate in the Sixth ward of the city of Albany, according to our best information, and that with the exception of those cases in which the value of such real estate has been changed by reason of proof produced before us, we have estimated the value of any such real estate at the sums which a majority of the assessors have decided *to be a fair relative value thereof;* and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, as the full and true value thereof, according to our best judgment and belief.

It will be seen that this oath differs very materially and substantially from either the certificate or oath prescribed by the law of 1851, which are substantially alike. Those laws requiring the oath or certificate to state that in assessing real estate they have estimated the value thereof "at the sums which a majority of the assessors have decided to be the *full and true value* thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor." The oath taken by the assessors instead of these words, states "we have estimated the value of any such real estate at the sums which a majority of the assessors have decided to be the *fair relative value* thereof."

The reason of this change was undoubtedly the fact which was proved in this case, and found by the court, that the rule acted upon by the assessors in assessing real estate during these years, was to assess at about forty per cent of its actual value. (See Twenty-first finding, fol. 294.) The courts of the State of New York have repeatedly held, and it is well settled law in that State, that an assessment without the certificate, or oath prescribed by statute, is absolutely void.

Van Rensselaer v. Whitbeck, 7 N. Y., 517.
Hinckley v. Cooper, 22 Hun, 253.
Brevoort v. City of Brooklyn, 89 N. Y., 128.

These cases were all cases of departure from the statutory oath, and it was held in all of them that such departure rendered the tax absolutely void.

Of course, the necessary result of this inadequate assessment of real estate was to throw a greater burden upon the bank stock, which constituted the bulk of the personal property.

2. The effect of this evidence would be, therefore, to show that in fact all other moneyed capital in the Sixth ward of the city of Albany was exempt from legal taxation during the years 1874 and 1875, and thus bring the case within the principle of the case of Boyer v. Boyer (*supra*).

SIXTH. THE PLAINTIFF IS CERTAINLY ENTITLED TO RECOVER BACK THE TAXES ASSESSED IN 1873.

The first two counts in the amended complaint are for taxes assessed in 1873 and collected in 1874. The Revised Statutes did not take effect until December, 1873.

The assessment of the year 1873 is, therefore, to be governed by the law of 1864, which was then in operation. Under that law there was a special prohibition against taxing shares of a national bank at a greater rate than those of "any of the banks organized under authority of the State where such association is located."

National Banking Act (13 St. at L. 112). § 41.

There can be no question that this restriction was violated by the assessment in question. The shares of the Mechanics and Farmers' Bank, a State bank, were assessed at the rate of only thirty-five per cent of actual value, while those of the Exchange Bank were assessed at eighty.

See Seventeenth Finding, fol. 292.

As to the taxes of that year, therefore, the mere fact that the shares of Mr. and Mrs. Williams were, intentionally and by the rule above mentioned, assessed at a greater rate than those of a State bank, furnishes sufficient ground for invalidating the tax.

See Van Allen v. The Assessors, 3 Wall. 573.

SEVENTH. IF THE ASSESSMENTS IN QUESTION SHOULD NOT BE CONSIDERED WHOLLY VOID, THEY SHOULD BE HELD VOID AT LEAST AS TO THE EXCESS OVER THE AVERAGE RATE ASSESSED UPON OTHER MONEYED CAPITAL, AND THE PLAINTIFF SHOULD HAVE JUDGMENT FOR SUCH EXCESS.

(1.) If the bank had filed a bill in equity to restrain the collection of the taxes, it would, undoubtedly, under the doctrine of the Cummings and Pelton cases, have been required to make a tender of the amount of taxes freely due, based upon the rate imposed on *other* moneyed capital.

(2.) This being an action at law, and the rule adopted by the assessors having been in direct violation of the restriction imposed by the law of the United States, we have clearly a right to recover the whole amount thus illegally collected.

(3.) But if this action, being for money had and received, should be considered as a *quasi* equitable suit, in which case plaintiff might be restricted in his recovery to the excess collected over the rate imposed on other moneyed capital, still the right to recover such excess would be undoubted.

(4.) But it was objected below that such excess could not be ascertained. If that be so, then as such inability to distinguish results

from the action of the assessors, the plaintiff should not suffer therefrom, but the whole tax be held bad.

See Santa Clara Co. v. South Pacific Railroad Co., 108 U. S. 394.

In fact, however, there is no difficulty in determining such excess from the evidence.

EIGHTH. THE COURT PROPERLY OVERRULED THE OBJECTION TO THE JURISDICTION OF THE COURT RAISED UPON DEFENDANT'S AMENDED ANSWER, AT FOLIOS 160 TO 162, OF THE RECORD. (See Judge Cox's opinion, fols. 324 to 330.)

I. So far as the amended answer alleges that the assignment to plaintiff did not confer upon him the entire interest in the subject-matter of the suit, it is well settled that the defense cannot be sustained. This matter is governed by the State practice. (R. S. of U. S. § 914.) It has been held by the New York Court of Appeals, that if a plaintiff, suing upon an assigned claim has a valid transfer as against the assignor, and holds the legal title to the demand, the defendant has no legal interest to inquire whether the transfer was an actual sale or merely colorable, or whether a consideration was paid therefor. In the language of Chief Judge Church, "The assignor could give the demand to the plaintiff, or sell it to him for an inadequate consideration, or without any consideration. It is enough if the plaintiff has the legal title to the demand, and the defendant would be protected in a payment or a recovery by the assignee."

Sheridan v. Mayor, 68 N. Y., 30, 32.
See also Stone v. Frost, 61 N. Y., 614.
Allen v. Brown, 44 N. Y., 228.

II. But it is claimed by the defendant that the causes of action set up in the complaint were assigned to the plaintiff and the plaintiff was made the plaintiff herein for the purpose of creating a case cognizable under the act of congress passed March 3, 1875, and he was improperly or collusively joined for such purpose.

It is a full and complete answer to this claim that the court has jurisdiction of the action under the law of 1875, referred to without reference to the citizenship of the parties. The plaintiff's assignor could have maintained an action if there had been no assignment, although he was a citizen of this state, because it is a

the plaintiff. And the same may be said of the assignments to Mr. Williams, which were absolute on their face and vested the whole claim in the assignee. The agreement to repay one-half of the net avails and suit was merely a mode of payment for the assignment and did not impair the legal title of the assignee.

The jurisdiction of the Circuit Court cannot, therefore, be successfully questioned on any of the grounds set up in the amended answer.

*Ninth.* No objection is made to the recovery upon the fourth count; that, therefore, should of course stand. The judgment of the Circuit Court as to the other counts should be reversed, and judgment directed thereon for the plaintiff for the amount demanded with interest, or a new trial ordered.

MATTHEW HALE,
*Attorney and of Counsel for Plaintiff in Error.*

*March* 1887.

121-b.35

# Supreme Court of the United States.

*No. 222.*

HATTIE E. STANLEY, Executrix, &c., Plaintiff in Error,

*vs.*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

REPLY TO BRIEFS OF DEFENDANT IN ERROR.

Matthew Hale,
*Attorney and of Counsel for Plaintiff in Error.*

Judd & Detweiler, Printers.

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REPLY TO BRIEFS OF DEFENDANT IN ERROR.

## I.

The learned counsel for the defendant in error seem, in some portions of their briefs, to have entirely misconceived the theory of the plaintiff.

No argument is necessary on their part to establish the proposition that this action could not be sustained simply by proof of an over valuation of the shares in question by the assessors resulting either from mistake or design.

Our contention is—

(1.) That the assessors deliberately adopted and habitually adhered to an unlawful rule or system for the assessment of bank shares.

(2.) That such rule or system necessarily resulted in taxing the shares in question at a greater rate than other moneyed capital in the hands of individual citizens of the State.

(3.) That the proceedings of the assessors were, therefore, in violation of section 5219 of the Revised Statutes.

We claim that the evidence and the findings of the Court support this contention. In examining this subject it is necessary to inquire—

*a.* What was the rule or system adopted or prescribed by the assessors?

*b.* What is its result upon the rate of the taxation of the shares in question as compared with the rate imposed upon other moneyed capital?

## II.

### WHAT WAS THE RULE OR SYSTEM ADOPTED BY THE ASSESSORS?

1. The court found that during the years in question the assessors assessed the shares of all the Albany banks, State and National, at their par value *without reference to the actual value of such shares.* (Eighth finding, p. 82.)

And also that this mode of assessment was not assented to by the assignors of the plaintiff or the officers of the Exchange Bank, but was objected to by said officers, who insisted that it was the duty of the assessors to assess all property, including bank stock, at its true and actual value. (Finding nine-and-a-half. P. 82.)

It is true that the Court declined to find in the language

of the ninth request (same page), that this was, by a rule, prescribed, &c.

But the facts found as above, and the uncontradicted evidence in the case, show that this was a deliberate system of the assessors, persisted in in spite of remonstrances by the officers of the bank, and in spite of knowledge on their part that the system resulted in unequal and excessive taxation of the shares in question.

2. The evidence is clear and uncontradicted that this system was deliberate and intentional—was in fact a "rule," as was said by the assessors themselves in their return to the *certiorari*, in 1874, in which they say: "THE SAME RULE IS FOLLOWED IN THE ASSESSMENT OF ALL BANK SHARES THROUGHOUT THE CITY."

Fol. 257, p. 75.

And see principal brief of plaintiff in error.

*Pages* 13 to 16.

## III.

THIS RULE OR SYSTEM RESULTED IN TAXING THE SHARES IN QUESTION AT A GREATER RATE THAN OTHER MONEYED CAPITAL.

See principal brief of plaintiff in error.

*Pages* 10 and 11.

The particular attention of the Court is called to the seventeenth and eighteenth findings (p. 85) as to the rate of the assessment of bank shares in Albany in the years in question, in connection with the fourteenth, fifteenth, and six-

teenth findings (pp. 84, 85) as to the actual value of the bank stock assessed.

It will not be successfully questioned that the stock in other banks was "other moneyed capital" within the meaning of § 5219.

While over $1,000,000 of this other moneyed capital was assessed at a *less* rate than the shares in question, only $150,000 was assessed at a greater rate.

See principal brief, page 11.

IV.

The fifth finding of the court below made at the request of the defendant in error, and quoted by the counsel at the bottom of page 27 of its principal brief, is not inconsistent with our claim.

This finding merely exonerates the assessors from the charge of an habitual, intentional, and systematic discrimination against the shares of "National banks" generally. Our claim is that the unlawful rule which they adopted for their own guidance, necessarily resulted in such discrimination against the holders of the shares of this particular National Bank.

The fact that the same rule operated still more unfairly against the shareholders of a small State bank, as well as against those of one other National bank, or that it worked to the advantage of the shareholders in several other National and State banks, did not render it any less prejudicial to the shareholders represented in this suit by plaintiff.

V.

The statement of the learned counsel for the defendant in error, in their supplemental brief (p. 3), that plaintiff does not complain, and that there is no evidence to show that the rate of assessment on the shares in question is higher than on other moneyed capital in the hands of individuals, but that our complaint is that other *banks* are assessed lower, shows a strange inadvertence as to the law, and the facts in the case.

There is, and can be, no assessment by State authority against *National banks*.

The *shares* in the banks, State and National, are moneyed capital. The great bulk (if not all) of the moneyed capital assessed in the sixth ward of Albany consisted of bank shares. Of this "moneyed capital" the great majority (over four-fifths) was asssessed at a rate far less than the shares in question, and only about one-tenth was assessed at a greater rate. This, as has been shown, was by a rule or system deliberately adopted and obstinately adhered to. This rule or system violated the restriction contained in § 5219. The fact that it was not justified by any State law did not make it any the less a violation of the law of the United States.

VI.

We still insist that the evidence offered and excluded, referred to in the fifth point of the principal brief of the plaintiff in error (pages 19 to 23), was competent to show that the tax collected upon the shares in question was at a greater rate than was imposed upon other moneyed capital, for the reason that there was *no valid assessment upon any other*

*moneyed capital*, and, therefore, that it was practically exempt from taxation, and a violation of section 5219 resulted, under the rule laid down by this Court in the Boyer case.

Whether the invalid taxes imposed on other moneyed capital were or were not paid does not appear from the record nor is it material. Taxes *were* collected upon the national bank shares in question. We offered to show that no valid tax was imposed upon any other moneyed capital, and this evidence was excluded, although it tended directly to prove the allegations in the complaint that the assessors did intentionally, by a rule prescribed by themselves, assess the shares in question at a greater rate than other moneyed capital. (See Record, p. 17.)

The judgment (except as to the fourth count) should be reversed.

MATTHEW HALE,
*Attorney and of Counsel for Plaintiff in Error.*

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# Supreme Court of the United States.

No. 222.

HATTIE E. STANLEY, EXECUTRIX, ETC., PLAINTIFF IN ERROR,

*against*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

No. 387.

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,

*against*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

STATEMENT AS TO STATUTES AND JUDICIAL DECISIONS OF THE STATE OF NEW YORK.

MATTHEW HALE,
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THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY.

## STATEMENT

*As to the statutes and judicial decisions of the State of New York, bearing upon the question as to the power of the assessors to correct unequal assessments, and also as to the power of the State courts to review decisions of the assessors.*

*First.* LAWS ON THE SUBJECT RELATING SPECIALLY TO THE CITY OF ALBANY.

The law governing the assessment and collection of taxes in the city of Albany, during the years 1873 to 1878, inclusive, is entitled "An Act to provide for the assessment and collection of taxes in the city of Albany," passed March 23, 1850, being chapter eighty-six, of that year. It contains the following provisions in regard to the correction of assessments:

§ 9. If any person shall, at any time before the assessors shall have completed their assessments, make affidavit that the value of his real estate does not exceed a certain sum to

be specified in such affidavit; or that the value of the personal estate owned by him, after deducting his just debts, and his property invested in the stock of any corporation or association liable to be taxed therefor, does not exceed a certain sum to be specified in the affidavit, it shall be the duty of the board of assessors to value such real or personal estate, or both, as the case may be, at the sum specified in such affidavit, and no more.

The provisions of this section shall apply to any trustee, guardian, executor or administrator, in their representative character.

§ 10. All real and personal estate liable to taxation, the value of which shall not have been specified by the affidavit of the person assessed, shall be estimated by the board of assessors at its full value, as they would appraise the same in the payment of a just debt due from a solvent debtor.

§ 12. The board of assessors shall complete the assessment-rolls on or before the first day of September in every year; and they shall forthwith cause notices thereof to be published in three of the public newspapers of the said city, to be published therein respectively at least twenty days.

§ 13. Such notices shall set forth that the assessors have completed their assesment-rolls, and that the same are at the assessors' office in the City Hall, where they may be seen and examined by any of the inhabitants of the city or any persons interested, during twenty days: and that the board of assessors will meet on a certain day at the expiration of such twenty days, specifying such day, at their office in the City Hall, and remain in session five days, for the purpose of reviewing their assessments, on the application of any person conceiving himself aggrieved.

§ 14. The assessors shall submit their assessment-rolls, at their office in the City Hall, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

§ 15. The board of assessors shall meet at the time and place specified in the notice, and on the application of any person conceiving himself aggrieved by their assessment, shall review the same; and when the person objecting thereto shall not previously have made affidavit concerning the value of his property as herein provided, the board of assessors shall, on the affidavit of such person, made as herein provided, reduce the assessment to the sum specified in such affidavit.

§ 16. If the person objecting to the assessment can show, by other proof than his own affidavit, to the satisfaction of the board of assessors, that such assessment is erroneous, the board of assessors shall review and alter the same without requiring any such affidavit.

*Second.* GENERAL LAW, AFFECTING THE WHOLE STATE, ON THE SAME SUBJECT.

§ 6. Whenever any person on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real or personal estate, as set down in the assessment-roll, it shall be the duty of such assessors to examine such person, under oath, touching the value of his or their said real or personal estate; and after such examination, and such other supplementary evidence, under oath, as shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just, and under the rule prescribed by section —— (probable omission; so in original) of this title; but if such person shall refuse to answer any question as to the value of his real or personal estate, or the amount thereof, or present sufficient supplementary evidence, under oath, to justify a reduction, the said assessors shall not reduce the value of such real or personal estate.

Chap. 176 of the Laws of 1851, as amended by chap. 536 of the Laws of 1857.

*Third.* Prior to May 12, 1880, there was no *statutory* remedy provided for the review of the action of the assessors. On that day was passed chapter 269 of the Laws of 1880, entitled "An act to provide for the review and correction of illegal, erroneous or unequal assessments."

This act provided for the issuing of a statutory *certiorari* for the review of assessments that might thereafter be made. It had no application to assessments made prior to the passage of the act.

*Fourth.* REMEDY BY COMMON LAW *certiorari.*

The only mode of reviewing assessments, prior to 1880, was by common law *certiorari.*

1. *This writ was discretionary, and not a writ of right.*

It is within the discretion of the Supreme Court to grant or withhold a common law *certiorari*, and its decision cannot be reviewed in the Court of Appeals.

People v. Hill, 53 N. Y., 547.

The writ of *certiorari*, in cases of this character does not issue *ex debito justitiæ;* but in the sound discretion of the court

upon special cause shown; and once issued, will be superseded, if the remedy sought be inconsistent with the interests of public justice and convenience.

People v. Assessors, 2 Hun, 583, 591.
See also People v. Police Commissioners, 82 N. Y., 506.
People v. Tax Commissioners, 85 N. Y., 655.
People v. Stillwell, 19 N. Y., 531.
People v. Supervisors, 15 Wend., 198, 206.

In the last cited case it is said by Judge Bronson:

But the writ of *certiorari*, especially in those cases where it is used for the purpose of reviewing the acts and decisions of the special jurisdictions which are created by statute, and do not proceed according to the course of the common law, such as boards of supervisors and commissioners of highways, does not issue *ex debito justitiæ*, but only on application to the court, and special cause shown. The reason is that these bodies exercise powers in which the people at large are concerned, and great public detriment and inconvenience might result from interfering with their proceedings.

15 Wend., 206.
See also People v. McCarty, 102 N. Y., 630

2. Inequalities in assessments, or injustice arising from the assessment of property at a greater rate than other property, cannot be corrected on *certiorari*, where the property of the person complaining is not assessed at more than its actual value.

(*a.*) A departure by assessors from the standard fixed by statute for estimating the value of property placed upon the assessment-roll cannot be corrected upon *certiorari*, nor can their failure to assess the property of a corporation, as required, be so corrected. The court may reverse the assessment as made, and direct a reassessment; but after the roll has been delivered to the board of supervisors and the power of the assessors over it has ceased, a *certiorari* should not be allowed, and if allowed, should be quashed even after return made.

People ex rel. Marsh v. Delaney, 49 N. Y., 655.

(*b.*) In the People ex rel. the Rome, Watertown and Ogdensburg R. R. Co. v. Dickson, 8 Hun., 178, the property of the relators, worth $24,080, had been assessed at $17,500, while other real estate in the town had been assessed at only

one-third of its true value. The relators claimed that the assessment-roll should be corrected by reducing the amount of the assessment on their property to one-third of its actual value; but this relief was refused by the Supreme Court, the General Term saying:

"This relator is not in fact assessed for more than the admitted value of its property. * * * and its only complaint is, really, that other parties, not before us or parties to this proceeding, are not assessed at the same rate with itself, and the relief it asks is utterly inadmissible.

8 Hun, 178, 179

(*c.*) In the case of the People *ex rel.* Youmans v. Supervisors, 60 N. Y., 381, the question arose under chapter 356 of the Laws of 1858, which provided as follows:

"Whenever assessments are made against any person in any town or ward in which he does not reside, the board of supervisors of the county to which such assessments are returned, shall have as full power and authority, and it shall be their duty to correct such assessments as to the valuation of the rents, and as to the gross amount for which such person shall be assessed as the assessors have as to a resident of the town; and such board of supervisors may reduce the amount of such assessments in the respective towns or wards of the county in proportion or otherwise, as the nature of the corrections require, to make such assessments just."

The relator claimed and showed that the other property, real and personal, in the towns in which he was assessed, were assessed at only one-third of their true value. He asked for a *mandamus* commanding the defendant to correct and reduce the assessments against him so as to make them proportionately equal to the assessments upon other taxable property in the towns. The Court of Appeals held that he was not entitled to the relief. The court say:

RAPALLO, J. The relator concedes that the assessments which he seeks to reduce, were made precisely according to the statute, that is, at the rate of $100 for every seven dollars of rents reserved in the leases. But he claims that this assessment is unjust for the reason that other property in the towns where he is assessed is assessed only at from one-third to one-fourth of its value, and consequently he is made to bear more than his just proportion of taxes.

This injustice results not from any erroneous assessment of the relator's property, but from the violation of their

duty by the assessors in undervaluing the property of the others, and the question presented is whether any power is conferred by law upon the board of supervisors of the county to reduce the valuation of his property below that prescribed by law, so as to make it conform to the erroneous undervaluation by the assessors of the property of other taxpayers.

To make the valuation of one class of property depend upon the violation by assessors of the duty required of them by law, in respect to another description of taxable property, would be recognition and sanction of such violations of duty, which we should not impute to the legislature, unless declared in the most unequivocal terms.

60 N. Y., 382, 383, 385.

*Fifth.* After the first of July, in the State at large (in Albany after September 1) the assessors have no power to add names or property to the assessment-roll, or to increase assessments.

Clark v. Norton, 58 Barb., S. C. R. 434, S. C., affd., 49 N. Y., 243, 247.
Westfall v. Preston, Id., 352.
Overing v. Foote, 65 N. Y., 263.
People v. Forrest, 30 Hun., 240.

*Sixth.* REMEDY BY MANDAMUS.

2. The office of the writ of *mandamus* is in general to compel the performance of mere ministerial acts prescribed by law. It may also be addressed to subordinate judicial tribunals, to compel them to exercise their functions, but never to require them to decide in a particular manner. It is not like a writ of error or appeal, a remedy for erroneous decisions. (*Judges of Oneida Common Pleas v. People*, 18 Wend., 92-99, and cases cited.) This principle applies to every case where the duty, performance of which is sought to be compelled, is in its nature judicial, or involves the exercise of judicial power or discretion, irrespective of the general character of the officer or body to which the writ is addressed. A subordinate body can be directed to act, but not how to act, in a matter as to which it has the right to exercise its judgment. The character of the duty, and not that of the body or officer, determines how far performance of the duty may be enforced by *mandamus*. Where a subordinate body is vested with power to determine a question of fact, the duty is judicial, and though it can be compelled by *mandamus* to determine the fact, it cannot be directed to decide in a par-

ticular way, however clearly it be made to appear what the decision ought to be. This principle was applied to an assessor in *Howland v. Eldridge* (43 N. Y., 457, 461), and is there recognized as an established and universal rule.

People v. Common Council, 78 N. Y., 33, 39.

2. The issuing of this writ is discretionary, and not a matter of right.

People v. Wendell, 71 N. Y., 171.
People v. Croton Aqueduct Board, 49 Barb., 259.

And it is always refused where the relator has a sufficient remedy by action.

Ex parte Lynch, 2 Hill 45.
People v. Campbell, 72 N. Y., 496.

*Seventh.* It is claimed, therefore, on the part of the plaintiffs in error, that there was no mode under the statutes or laws of the State of New York, by which a correction of the errors complained of, could have been compelled. The assessors could not have been compelled to correct such errors, because the assessment upon the shares in question was at less than their actual value, and the injustice complained of was in assessing other property at a still lower rate. For the same reason, as above shown, a correction could not have been made by suing out a common law *certiorari*, or by an application for a *mandamus* even if such writs, in the discretion of the court, should be allowed; nor was any review provided by appeal, or otherwise, of the acts or decisions of the assessors under the law, chapter 345, of 1883, the validity of which is involved in the Williams case. (No. 387.)

MATTHEW HALE,
*Attorney and of Counsel for Plaintiffs in Error.*

*March* 28, 1887.

121-535

SUPREME COURT U.S.
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# Supreme Court of the United States

## OCTOBER TERM, 1886.

No. 222.

HATTIE E. STANLEY, PLAINTIFF IN ERROR,

*vs.*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, DEFENDANT IN ERROR.

## BRIEF OF DEFENDANT IN ERROR.

WHEELER H. PECKHAM,
SIMON W. ROSENDALE,
*Of Counsel for Defendant in Error*

# Supreme Court of the United States

## OCTOBER TERM, 1886.

No. 222.

HATTIE E. STANLEY, PLAINTIFF IN ERROR,

*vs.*

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, DEFENDANT IN ERROR.

## BRIEF OF DEFENDANT IN ERROR.

WHEELER H. PECKHAM,
SIMON W. ROSENDALE,
*Of Counsel for Defendant in Error.*

# UNITED STATES SUPREME COURT.

**No. 222.**

HATTIE E. STANLEY, Executrix, &c.,

*Plaintiff in Error,*

AGAINST

THE BOARD OF SUPERVISORS OF ALBANY COUNTY,

*Defendant in Error.*

## BRIEF OF DEFENDANT IN ERROR.

This case arises under the provisions of § 5,219 of the Revised Statutes of the United States, touching taxation of shares of National Banking Associations.

Edward N. Stanley, the plaintiff in error, claiming to be the assignee of various shareholders of the National Albany Exchange Bank, sues the Board of Supervisors of the County of Albany, N. Y., to recover back, taxes, as he claims, illegally collected from his assignors.

This action has once been before this tribunal, and is reported in 105 U. S. Reports, at pp. 305 *et seq.* A judgment obtained by plaintiff in error, was reversed by this court.

In a supplemental opinion (105 U. S., 316, 317, 318,) this court said but "if *it can be proved* that the assessors habitually and "intentionally, or by some rule prescribed by themselves, or "by some one whom they were bound to obey, assessed the "shares of the national banks higher in proportion to their actual "value than other moneyed capital generally, then there is ground "for recovery, and a hearing as to that should be granted."

The plaintiff, subsequent to the decision of this court, on motion, was permitted to amend his complaint.

One count of the original complaint is printed in the Transcript of Record (page 45).

The amendment (Transcript of Record, p. 4, fol. 11,) was made, so that the complaint might conform to the supplemental opinion hereinbefore referred to, and as amended, alleged, "that "the assessors intentionally assessed, by a rule prescribed by them- "selves, shares of stock in the National Albany Exchange Bank "at a greater rate than other moneyed capital in the hands of indi- "viduals of the State of New York."

Amended complaint, fols. 10 and 11.

After this amendment was made, but before the trial, the plaintiff in error *discontinued* the action as to the 5th, 6th, 7th, 10th, 11th and 12th counts, (as to which the statute of limitations had not run,) and the case was retried before Judge Coxe without a jury,) a jury trial, having been waived by the parties, fol. 272, p. 79), upon the counts remaining in the complaint, viz., 1st, 2d, 3d, 4th, 8th, 9th, in the light of the intimation made by this court in its supplemental opinion and decision. Judgment was given for the detendant, excepting as to the fourth count.

Judge Coxe wrote an opinion (Record, p. 94,) which is reported in 15 Fed. Reporter, 483.

Judgment was awarded to plaintiff on the fourth count. This was the count to recover the taxes collected on the shares of one of the shareholders, viz., Chauncey P. Williams, who had made proof before the assessors that he owed debts exceeding the amount of his assessment. This question had been presented and disposed of by the previous determination of this court, and, pursuant to its decision (105 U. S., at p. 316), judgment was rendered on the fourth count of the complaint.

So that this case is now presented on the counts remaining in the complaint (1st, 2d, 3d, 8th, 9th) upon the proposition as above stated.

# POINTS

## I.

THIS CASE SHOULD HAVE BEEN DISMISSED UNDER AND BY VIRTUE OF THE FIFTH SECTION OF THE ACT OF MARCH 3, 1875, CHAPTER 137 (18 STAT. AT LARGE, PART 3, P. 470).

(*a.*) By the act above mentioned, it is made the duty of the court, even on its own motion, to dismiss such a case, where the parties have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable under the act.

The section cited reads as follows:

"That if, in any suit commenced in a Circuit Court, or removed from a State court to a Circuit Court of the United States, it shall appear to the satisfaction of said Circuit Court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just, but the order of said Circuit Court dismissing or remanding said cause to the State Court shall be reviewable by the Supreme Court on a writ of error, or appeal, as the case may be."

(*b.*) There can be no doubt that the sole cause of the assignment to Stanley, the present plaintiff, was to give jurisdiction to this court, or, at least, to put the question of jurisdiction beyond any doubt.

The assignment, by the shareholders, was made to Williams as a sort of speculation.

* * * * * * * *

"The subscriber will bear the expense, and take the risk of the "prosecution. No expense or liability is to be incurred either by "the bank or shareholders. In case of success, it is hoped that the

"sum recovered may, in whole, or in part, reimburse the expenses "incurred. If more should be realized, *one half the excess will be* "*paid to you, the other half to be retained* as compensation for the "risk and care of the prosecution."

* * * * * * * *

See circular, May 10, 1875, pp. 56, 57, Transcript of Record, (fol. 188.)

See also assignment of shareholders to Williams, pp. 61, 62, at fol. 207, as follows:

* * * * * * * *

"One-half of my ratable share of such excess, (after paying total "costs and expenses of litigation), shall be paid over to me by said "Williams, when so recovered, *the other half to be retained by said* "*Williams.*"

* * * * * * * *

Mr. Williams assigns these claims over to Mr. Stanley (pp. 67, 68). He is a nephew of Mr. Williams' wife, * * there was no money paid, * * * the engagement or arrangement was, that the suit was to be tried in his name, and that he would see to prosecuting the suit, and he should not be subject to any cost; as to anything further, there was no definite arrangement. * * Mr. Williams expected that after the suit was determined, and in case any money was collected, it should be paid over or returned to him (Williams' testimony, fol. 232). This was based on the lack of pecuniary interest of Stanley, (the plaintiff, fol. 232), and in view of their relations to each other. The assignment was made to Stanley, because Mr. Williams "was advised to do so," that the matter might stand in "a better position" (fol. 233), "*because the plaintiff was a non-resident of the State of New York.*"

At fol. 234, Mr. Williams admits that the assignment was made to plaintiff, for *the purpose of having as plaintiff, a non-resident of New York State.* Since the assignment was made, Mr. Williams has furnished the money to pay the expenses of the litigation, including counsel fees. The same counsel was retained by plaintiff as had acted for Mr. Williams. (P. 69, fols. 234, 235).

The assignment to this plaintiff (for the purpose of making a

case cognizable under this act) was, therefore, within the meaning of the act, a collusive making of the plaintiff a party to the action.

Williams v. Nottawa, 104 U. S., 209.
Farmington v. Pillsbury, 114 U. S., 138.

(*c.*) Upon such fact appearing, it is the duty of the court to dismiss the suit even on its own motion, and without any plea.

Williams v. Nottawa, 104 U. S., 209.
Hawes v. Oakland, 104 U. S., 450.
Huntington v. Palmer, 104 U. S., 482.
Coffin v. Haggin, 11 Fed. Rep., 219.
M. C. & L. M. Railway v. Swan, 111 U. S., 379.
Farmington v. Pillsbury, 114 U. S., 138.
Little v. Giles, 118 U. S., at 603.

(*d.*) The case is not altered, even though it should turn out, that there was in reality no necessity for the assignment, and that the court would have had jurisdiction, in the case of a plaintiff residing within this State.

The statute was aimed at collusive arrangements, and at making plaintiffs or defendants, those who had no real interest in the controversy, and for the sole purpose of giving the court jurisdiction.

It is the *intent* which is wrong, and when such intent appears—when the court sees that the plaintiff was made plaintiff for the sole purpose of giving the court jurisdiction, then the mischief intended to be guarded against by the statute arises, and it is the duty of the court to dismiss.

The above cases carry out such doctrine.

In Williams v. Town of Nottawa (*supra*) Mr. Chief Justice Waite says:

"In this connection we deem it proper to say that this provision "of the act of 1875 is a salutary one, and that is the duty of the "Circuit Courts to exercise their power under it in proper cases. "If they improperly dismiss a cause their action in that behalf is "expressly made reviewable here."

And, in Farmington v. Pillsbury, 114 U. S., 138, Williams v. Nottawa (*supra*) is again approved, Chief Justice Waite further stating, p. 144, that the statute "is equivalent to an express enact-

"ment by Congress, that the Circuit Courts shall not have jurisdic-
"tion of suits which do not really and substantially involve a dis-
"pute or controversy of which they have cognizance, nor of suits
"in which the parties have been improperly or collusively made or
"joined for the purpose of creating a case cognizable under the
"act."

(*e.*) Possibly plaintiff's assignor thought, this court had jurisdiction, if he, a citizen of New York had been made plaintiff. But he had not confidence enough in the point to run that risk, and so he makes this assignment to a citizen of Illinois, who at once commences suit, and has the same counsel as his assignor had.

The question for the court is simply, with what intent was this assignment made? Was it for the purpose of obviating any objection arising from the plaintiff being a citizen of New York? And if so, then such intent was a collusive or improper intent within the meaning of such statute, and the plaintiff must fail on that account, and his case be dismissed.

(*f.*) It is of not the least consequence that the assignment was made so absolute and unconditional, that in law there could be no recovery for a reassignment or anything of that kind, and so, that there was no kind of legal obligation on the part of the assignee, to pay one dollar of any recovery to the assignor.

Coffin v. Haggin, 11 Fed. Rep., 219.
Fountain v. Town of Angelica, 12 Fed. Rep., 8.

In Farmington v. Pillsbury, 114 U. S., 138, the plaintiff had given, in consideration for the assignment, his note to the assignors, together with an agreement that he would pay to the assignor fifty per cent. of the amount recovered upon the coupons assigned to him. This court held (p. 146) that it was "a suit for the benefit "of the owners of the bonds. They are to receive from the plain-"tiff one-half of the net proceeds of the case they have created by "their transfer of the coupons gathered together for that purpose. "The suit is their own in reality, though they have agreed that the "plaintiff may retain one-half of what he collects for the use of his "name and trouble of collecting."

(*g.*) So the assignment of the cause of action in the case at bar "was a contrivance, a pretext, the result of a collusive arrange-"ment," and, irrespective of, and prior to, the act of 1875, this court held where it was manifest that the *real interest remained in the assignor* jurisdiction would not be entertained.

Barney v. Baltimore, 6 Wall., 280, reaffirmed and approved in Bernards Township v. Stebbins, 109 U. S., 341-354.

The Cause should have been dismissed by the Circuit.

## II.

A DISMISSAL ON SUBSTANTIALLY THE SAME THEORY, SHOULD HAVE BEEN ORDERED, BECAUSE OF THE FOLLOWING FACTS:

(*a.*) Mr. Williams, to whom the assignments of the stockholders were originally made, had, in addition to their alleged causes of action, several alleged causes himself, and of an amount exceeding $500.

Some of the causes of action assigned to him by stockholders involved more than $500, while very many did not, and did not at the time of the commencement of the action herein.

(*b.*) The assignment to Williams, and by him to Stanley, of those alleged causes of action, which did not involve $500, must have been for the purpose of adding them to the other causes of action, or to each other, and in that way to make the assignee, if it were legally possible, the owner of a cause of action cognizable in this court, in the cases of these separate claims, involving less than $500. In other words, although these separate causes of action on the part of separate stockholders, which did not involve $500, were not, under the statute, cognizable in the Circuit Court, yet each assignor would assign his cause of action to an assignee, and he, by adding them together, would have a cause of action thus cognizable.

This was evidently the intent of such assignment, and such intent is within the provisions of the statute above referred to.

(*c.*) In Williams v. Nottawa (above cited) the plaintiff was the owner of $300 in amount of the bonds sued on, while one Tobey owned $300 more, and it would seem he had assigned them to Williams, who got judgment for the six bonds of $100 each, with interest, making $994.57.

All the other bonds in question, being those on which judgment was rendered in favor of the township, were owned by Kline & Connor, who assigned to Williams only for the purpose of having suit brought.

Williams brought error to the Supreme Court for the purpose of reversing the judgment rendered in favor of the town on the Kline & Connor bonds.

The Supreme Court, instead of reversing the judgment simply, went further and said it was evidently the intent to give jurisdiction to the court by the assignment of the bonds upon which judgment was rendered, in favor of the town to the plaintiff, and that the plaintiff himself had no cause of action involving $500, and the assignment of Tobey to him was for the same purpose, and consequently the Circuit Court should have dismissed the whole case, and this the Supreme Court directed should be done.

(*d.*) The same rule would at least call for the dismissal of all those causes of action which, at the time of the commencement of the action, did not amount to $500.

This embraces all the names and amounts in Schedule A (p. 34, fol. 108,) which refers to the eighth count in the complaint, excepting William Gould, amount ..... $1,400 76
Sylvester Hale ..... 562 73
S. B. McCoy ..... 1,155 12
John Pruyn ..... 668 80

$3,787 41
Amount in eighth count consisting of items under $500. 7,817 34

Total claim in eighth count ..... $11,604 75

So that the amount, as to which, as we claim there is no jurisdiction, so far as the eighth count is concerned, is. $7,817 34

In the ninth count of the complaint and to which Schedule B

refers (p, 36, fol. 112), there are only items of $500 and upwards, as follows:

| | |
|---|---|
| William Gould | $1,061 15 |
| S. B. McCoy | 829 03 |
| | $1,890 18 |
| Amount claimed in ninth count made up of claims under $500 | 6,257 08 |
| Total claim in ninth count | $8,147 26 |
| Amount as to which we claim there was no jurisdiction, so far as ninth count is concerned, is | $6,257 08 |

Hawley v. Fairbanks, 108 U. S., 544.

The fact, that some of such causes of action might now, by the addition of interest up to this time, involve $500 is immaterial, as in the case last cited, the question to be determined was, what was the amount involved at the time the jurisdiction of the court was sought.

Railroad Co., v. Trook, 100 U. S., 112.

(*e.*) And so the amount is insufficient to give jurisdiction to this court. *Cases supra.*

(*f.*) In this case no two of the assignees claim under the same title. There could not, in the nature of the case, be such a claim. It is a separate and distinct and independent act in regard to each separate stockholder, that gives him a separate, distinct and independent cause of action. There is no common or undivided interest in these claims. Each stockholder has his own claim, which depends upon its own separate and independent facts. There is to be no division of a common fund, with a total liability on the part of the defendant arising out of the facts of the case constituting one cause of action, while the different parties make claims to the common fund arising from the same general and common title. On the contrary, the fund is not common at all, nor does the liability of defendants spring up with regard to any common amount. It is a liability to each stockholder, based upon a separate wrong done him in taking his property, to make the amount of a tax placed

upon his specific shares by virtue of a separate assessment upon them.

It is not like the case of a mortgage for a large sum, to cover an issue of bonds, payable to bearer, or order, where each bond might be less than $500, and which were assigned to one person who brought suit, even assuming that this could be done. There is really in such matter, perhaps, an interest in a common fund, or one entire contract to pay the bonds. But this is no such case. Could five shareholders of separate banks, each claiming to have been illegally assessed $100, assign to one and thus obtain jurisdiction?

(*g.*) The policy of the act of 1875, is to discourage the resort to the Federal Courts, by assignees to whom an assignment has been made for the purpose of giving jurisdiction.

## III.

THE OBJECTION TO THE EVIDENCE OFFERED AT FOLIO 269 WAS WELL TAKEN, AND THE TESTIMONY PROPERLY EXCLUDED.

(*a.*) It was not within the issue. It would in nowise tend to prove any intentional and unjust discrimination as to valuation, against the shares of the Exchange Bank.

(*b.*) If it was material for any purpose it was, to prove that the *whole assessment* was irregular and illegal; this was not pleaded by plaintiff.

(*c.*) In the light of the stipulation, given by plaintiff's attorneys, it was offered only for the purpose of showing, that plaintiff and his assignors, were assessed at a greater rate than was other moneyed capital, etc.

See stipulation, p. 50, fols. 163, 164.

And upon this question it was immaterial, and properly excluded.

## IV.

THE PLAINTIFF CANNOT RECOVER, BECAUSE THE TAX, EXCEPTING AS REGARDS THE FOURTH COUNT (AND WHICH IS NOW ELIMINATED, BECAUSE PLAINTIFF IN ERROR, RECOVERED JUDGMENT THEREON), WAS NOT VOID, BUT VOIDABLE ONLY, UPON PROOF OF THE INDEBTEDNESS OF THE SHAREHOLDER, AND OF HIS DEMAND TO REDUCE HIS ASSESSMENT, AND IN A DIRECT PROCEEDING FOR THAT PURPOSE.

(*a.*) The Supreme Court in this case has decided that an assessment under the act of 1866 is not necessarily void, and that such act was not wholly illegal.

Stanley v. Board of Supervisors, 105 U. S., 305, app. 314–315.

"It follows that the assessors were not without authority to assess "national bank shares. * * * That in cases where indebted-"ness existed, which ought to be deducted, the assessment *was* "*voidable, but not void*" (p. 315).

(*b.*) The assessors therefore had jurisdiction to assess the shares of the plaintiff's assignors as of *some value*. Having jurisdiction so to assess, then their judgment as to what amount will be proper is a judicial judgment made upon a subject over which they had jurisdiction, and though they may have erred in the determination as to value, such error does not oust them of jurisdiction, and so does not render the assessment void.

Williams v. Weaver, 75 N. Y., 30; and cases there cited.

The Supreme Court did not overrule this doctrine in the case of People v. Weaver (100 U. S., 539), but in Williams v. Weaver (100 U. S., 547), it affirmed the judgment of the New York Court of Appeals in above case.

(*c.*) No case can be found where a recovery of the full amount of a tax paid into the treasury has been permitted, where the assessment was made by officers having jurisdiction to assess the property assessed.

In Newman v. Supervisors (45 N. Y., 676, at 687) the right to recover back the amount is based upon the fact that the treasury had received the money by acts which *were void for want of official* power and jurisdiction to do them.

Bank of Chemung v. Elmira (53 N. Y., 49, at 52) goes on same principle, and in speaking of the right to recover back, the court said: "They were made and levied not only without authority, but "in violation of an express statute." The property itself, which was assessed, was not taxable. Hence the assessment was utterly void.

So in more recent cases, the Court of Appeals holds, reaffirming the foregoing cases, that to recover back the money the assessment must be *void*, like a void judgment, a nullity; then the assessment may be recovered back.

Bruecher v. The Village of Port Chester, 101 N. Y., 240, 244.

(*d.*) Here is no such case, excepting as to the tax mentioned in the fourth count.

In the cases, Pelton v. National Bank (101 U. S., 143) and Cummings v. National Bank (101 U. S., 153), where the taxing officers systematically and intentionally under-valued all other moneyed capital, the court said it was a violation of the act of Congress, but it did not render the whole assessment actually *void*, but only the excess, and upon tender of the amount which such shares ought to pay, the collection of the balance might be enjoined.

(*e*) The court in this case, in writing the supplemental opinion (105 U. S., p. 318), says, a right of recovery would exist in case it could be proved that the assessors habitually and intentionally, or by some rule prescribed by themselves, or by some one whom they were bound to obey, assessed the shares of the national banks higher, in proportion to their actual value, than other moneyed capital generally. The court evidently had in mind simply the question of the assessment, and not that of how far a recovery could be allowed in such a case as this of money already paid into the treasury.

Such an assessment would simply be one of over-valuation.

But there was *jurisdiction*, as has been said, to make some assessment, and hence the whole assessment was *not void*. The excess only would be void, and there is no proof what such excess would be. And a payment of the tax, under such circumstances, gives no right to recover the amount back again, certainly not the full amount.

In Hicks v. Westport (130 Mass., 478), a non-resident of Massachusetts was taxed on a large amount of personal property as a resident of the town of Westport therein. He had certain horses and cattle in the town in which he was assessed, and taxable there by virtue of a special statute, but vastly less in value than the property for which he was improperly assessed. The court held that part of the tax was a legal one, to wit, that on the horses and cattle, but not upon the other personal property. The action was to recover back the amount of tax paid on the personal property which was not assessable. But the court refused to sustain the action, saying it was the settled rule that an action could not be maintained to recover back a tax paid to a town or city, if any part of the tax is legal. Chief Justice Shaw said, in Lincoln v. Worcester (8 Cush, 55, 63), that "there is no case in which it has been determined that "one part of the same tax, whether on real or personal estate, laid "for a lawful purpose, may be held legal, and another portion illegal and invalid, so that the latter can be recovered back in an "action of assumpsit."

The court held that the result was one of *over-valuation simply*, and that no action had ever been sustained to recover back any portion of a tax thus assessed.

In a recent case in California, in the Federal Court, the same doctrine was applied to a case, where the assessors, deliberately, valued the mortgages of plaintiff at double the value of all other lands for such purpose, and levied and collected a tax thereon accordingly. The court held, that the proceedings were *quasi* judicial, and the assessors having jurisdiction, the legality of the act could not be questioned, in an action at law to recover back the one-half the tax as illegal.

Balfour v. City of Portland, 28 Fed. Rep., 738, citing cases in the State and Federal Courts.

It is the same principle precisely with this assessment, even upon the claim of plaintiff.

## V.

SUCH AN ASSESSMENT AS IS HERE IN QUESTION, DURING THESE SEVERAL YEARS, AS HAS BEEN SAID, IS NOT VOID ENTIRELY (EXCEPTING THAT WHICH WAS IN THE FOURTH COUNT), AND HENCE BEFORE ANY ACTION CAN BE MAINTAINED TO RECOVER THE AMOUNTS PAID, THE ASSESSMENTS MUST BE SET ASIDE.

(*a.*) An assessment or tax which is not wholly void, void in the sense that a judgment rendered by a court upon a subject-matter over which it has no jurisdiction is void, cannot be overhauled in a collateral action to recover back money paid under it to the county or town otherwise entitled to receive it.

Such has been held to be the law in

Swift v. City of Poughkeepsie, 37 N. Y., 511.
Bank of Commonwealth v. The Mayor, 43 N. Y., 184.
Railroad Co. v. Supervisors, 48 N. Y., 93.
Peyser v. The Mayor, 70 N. Y., 497.
Wilkes v. The Mayor, 79 N. Y., 621.
Bruecher v. Village of Port Chester, 101 N. Y., 240.

In the first case the Court of Appeals, per Parker J., delivering the opinion, at page 514, said: "The logical result of this principle, it seems to me, determines this action in favor of the defendant. The moment this court held and decided that, in determining the question of the liability of the plaintiff to an assessment in respect to the stock held by him, the assessors were exercising a judicial function, and that the assessment was in effect a judgment, the conclusion followed that their determination could not in this form of action be overhauled. Conceding that the judgment they passed was erroneous, still, while it stood unreversed, it protected not only them, but all who acted in supplementing and carrying out that judgment and availing themselves of its fruits; and the money thus obtained can no more be recovered back by action than can a suit be sustained and money recovered which has been collected upon the erroneous judgment of any court of competent jurisdiction. And I fully concur in the conclusion announced by this court when this and the other cases were before it, that 'it would be an anomaly to hold that no liability attached to those who instituted and carried

out the proceedings to compel the payment of the money by the plaintiff, there being no statutory protection, and yet that the individual or corporation who received it is legally liable to refund it.'"

To the same effect is 43 N. Y., 184, and the other cases cited. If there be jurisdiction to assess at all it is enough. In the Poughkeepsie case above, there was no jurisdiction to assess the property, and yet such an action as this was repudiated.

The principle maintained in the Swift case has probably been so far altered by subsequent cases as to permit a recovery where there was absolutely no jurisdiction to assess at all, as jurisdiction was not acquired by the assessors deciding they had it. But where there is jurisdiction to make some assessment, no case can be found permitting such an action as this, and in the Poughkeepsie case it was assumed that the assessors had jurisdiction over the property. (See remarks of Ch. J. Church on that case in Elmira case in 53 N. Y.)

(*b.*) The case of Horn v. Town of New Lots (83 N. Y., 100), does not alter this rule. There the act under which the assessment was levied, and by virtue of which the proceedings were taken, resulting in the levying upon plaintiff's property to pay her share of the assessment, had been subsequently declared unconstitutional, and therefore *utterly void*. It was held that in such case the plaintiff could maintain her action to recover back the amount of her tax, although no judgment had formally declared the assessment vacated.

But it was not needed. It was in any and all possible circumstances an utterly void assessment, wholly incapable of giving any right to anybody or of furnishing any protection to anyone. To the same effect is Steamboat Co. v. Buffalo (82 N. Y., 351), where the action was sustained because the assessors had no right to assess at all, were without any jurisdiction whatever. On the contrary, the Supreme Court here holds that there was jurisdiction to make an assessment, and that the tax is not necessarily void, but is only voidable in certain cases. The court says at page 315 (105 U. S.): "It follows that the assessors were not without authority to assess "national bank shares; that where no debts of the owner existed to "be deducted, the assessment was valid, and the tax paid under it a "valid tax; that in cases where there did exist such indebtedness, "which ought to be deducted, the assessment was voidable but not

"void. The assessing officers acted within their authority in such "cases until they were notified in some proper manner that the "shareholder owed just debts which he was entitled to have "deducted. If they then proceeded in disregard of the act of Con- "gress, *the assessment was erroneous*, and the case of People v. Wea- "ver (*supra*) shows how that error could be corrected."

(*c.*) The same principle acts as to the assessment made at a greater rate, etc. The right existed to *make some assessment*, and hence an over assessment, by reason of over-valuation, as compared with other moneyed capital, is not *void*, in the sense here alluded to.

In 83 New York (*supra*), Judge Folger concedes the rule to be that, where the invalidity of the tax or assessment does not appear upon the proof that must be made to sustain proceedings under them, but the invalidity is *latent*, and must be shown to exist as a part of other evidence, that in such case, no recovery can be had unless the assessment or tax has been set aside.

Within that rule this action cannot be maintained. As proven, jurisdiction to tax existed, the proof to be made to sustain proceedings under the assessment would not disclose any invalidity therein. On the contrary, such invalidity, assuming it to exist, would have to be proved by evidence of valuations or assessments of other moneyed capital, etc., and of willfulness of assessors, etc.

Clearly, therefore, within well-settled principles of the law of the State of New York, which this court will follow, no recovery could be had, in any event, upon the cause of action now set out in the complaint.

(*d.*) If the action were in the State court, no recovery would be permitted because of the assessment never having been set aside, and because the assessment was not necessarily void. This court decides such a question in the same way, *i. e.*, in accordance with the law of the State.

In Shelby v. Guy (11 Wheat., 367), the Supreme Court says: "Yet that course is necessarily indicated by the duty imposed on "us to administer, as between certain individuals, the laws of the "respective States, according to the best lights we possess of what "those laws are."

In Suydam v. Williamson (24 How., 434), the same court said: "Upon cases like the present (error to the United States Circuit in "New York), the relation of the courts of the United States to the "State *is the same* as that of her own tribunals. *They administer the "laws of the State*, and to fulfill that duty they must find them as "they exist in the habits of the people, and in the exposition of "their constituted authorities."

## VI.

THE SINGLE QUESTION, ON THE MERITS, LEFT FOR ADJUDICATION IN THIS CASE, IS, WHETHER THE ASSESSORS, DID, IN THE LANGUAGE OF THE SUPPLEMENTAL DECISION IN THIS CASE, AND OF THE COMPLAINT, AS NOW AMENDED, HABITUALLY AND INTENTIONALLY, ETC., ASSESS THE SHARES IN QUESTION, HIGHER, IN PROPORTION TO THEIR VALUE, THAN OTHER MONEYED CAPITAL GENERALLY.

Case on former appeal, 105 U. S., 317, 318, Complaint, Tr. Record, fol. 11.

All questions of conflict of legislation, between the laws of the United States and the laws of New York were definitely settled on the former appeal, and the court will not re-examine these questions, on this subsequent writ of error.

Clark v. Keith, 106 U. S., 464.

## VII.

PLAINTIFF FAILED TO MAKE A CASE, WITHIN THE RULE LAID DOWN, AND ADJUDICATION MADE BY THIS COURT.

To have recovered judgment, plaintiff was bound to prove (in the language of this court), Stanley v. Supervisors, 105 U. S., at p. 318, "That the assessors habitually and intentionally, or by some "rule prescribed by themselves, or some one whom they were "bound to obey, assessed the shares of the national banks higher, "in proportion to their actual value, than other moneyed capital "generally."

This he failed to do in the court below:

1. He proved and the court below found that there were nine banks in the city of Albany during the years in question.

Finding 8th, p. 82.

2. That the shares of these banks differed in value, and the actual value of the shares ranged from $100, the lowest, to $285, the highest, per share of the par value of $100, the shares of the Exchange Bank being of the value of about $125 per share. Some were state banks and some national banks.

Findings 6th and 10th, pp. 81, 82.

3. That the bank stocks of the different banks represented the following proportion of the total assessment for personal property in the ward in which they were situated.

1873 ..... about ..... $\frac{29}{33}$
1874 ..... about ..... $\frac{24}{28}$
1875 ..... about ..... $\frac{22}{26}$

Findings 11th, 12th and 13th, pp. 83, 84.

4. That the difference between the actual value and assessed value of bank stocks was as follows:

| | Actual Value. | Assessed Value. |
|---|---|---|
| 1873 ..... | $5,294,050 | $2,901,550 |
| 1874 ..... | 4,829,050 | 2,446,550 |
| 1875 ..... | 3,762,050 | 2,259,550 |

Findings 14th, 15th, 16th, pp. 84, 85.

5. That the rate or per centage of assessments on bank stock, and proportion to actual value during the years questioned, ranged from 100 the highest, to 35 the lowest.

(*Of these there were two higher and six lower than plaintiff's shares, two others, being very nearly at the same rate.*)

Finding 17th, p. 85.

This was not sufficient to justify or require a judgment in plaintiff's favor.

The grounds on which plaintiff stands, so far as any proof in this case exists, are:

1st. That his shares were assessed relatively higher than *some* other (shares), moneyed capital invested in national banks.

2d. That because it is to be *inferred*, that some personal property escaped assessment, therefore his shares were assessed at a higher rate.

(*a*) As to the first proposition, we say: The findings on this subject are, that while *the shares of the National Exchange Bank were worth* $125 *per share*, they were assessed at par, and so were the shares of the County Bank, a State bank, which were worth only $100, and the Union National Bank, which were worth only $110.

The assessment of bank shares during the years in question, shows no greater irregularities than is apt to occur, in assessments of bank shares, the real value of which, it is difficult to ascertain, because of the infrequency of sales, or other tests of actual value; the mere fact of large assets, being, not always, controlling.

Here are State bank and National bank share assessments. And, while some shares were worth more, and some less, all were assessed at par, it is one of those inequalities in taxation which are inevitable, but which do not fall within the spirit or letter of the act of Congress as to assessing bank shares at a higher rate than other moneyed capital.

See opinion of Coxe, J., fols 332–338.

The facts on this branch of the case are similar to those in the National Bank v. Kimball, 103 U. S., 732, where this court decides that under similar circumstances there was no such discrimination shown as rendered the tax vicious.

See 103 U. S., at p. 735.

The findings here show that, if, as to moneyed capital (or personal property) there was any discrimination in the assessments, it was *in favor* of the shares of national banks; all other moneyed capital was assessed its full value, and bank shares, including plaintiff's, were assessed at *less than their full value.*

See findings 7th, 8th, 9th, Transcript Record, p. 92.

(*b.*) As to the second proposition. It has never been held that "moneyed capital," in the sense of the act of Congress, is synonymous with "personal property."

Evansville National Bank v. Britton, 105 U. S., 322.

(*c.*) The plaintiff's contention would, however, require the decision, that because some *personal* property escaped, or was assessed at a lower rate, bank shares must escape.

This personal property, in this sense, would include all merchandise, furniture, ornaments, works of art, live stock.

Such cannot be the intention of the law, such certainly is not its reading.

In re McMahon v. Palmer, 102 N. Y., 176–187.

(*d*) Within the terms of the statute there was no "individual banker" in the city of Albany at any of the times herein mentioned. That term has been construed to mean, one who has availed himself of the provisions of the banking acts of this State, to obtain the privileges thereby granted to any person who will singly comply with their prerequisites, and who may thereby be granted the right to do banking thereunder, and it is used to distinguish one person doing a banking business in the way the laws of the State authorize an association of persons to join tog ther therefor.

People v. Doty, 80 N. Y., 225.

(*e.*) In Albany there were persons who as individuals, or as a firm, in an individual or a firm name, did business of a banking character somewhat mixed up with the business of a broker, but in the exercise thereby of no right or franchise or special privil ge derived from the State, not open and common to all the citizens thereof. They were engaged in the business of dealing in money, coin, stocks, bonds, etc., as others were in dealing in grain, lumber, liquors or other commodities.

There may have been "private" as distinguished from "individual" bankers in Albany during these times. But a private banker is one who exercises in his business no more than the rights and privileges common to all men.

People v. Doty (supra), at p. 233.

(*f.*) Such men therefore were necessarily to be taxed the same as any other individual, and on their personal property, at the place of their residence. The fact that they were not assessed proves nothing. They may have been in debt to an extent greater than their taxable personal property.

(*g.*) The assessors sought to assess all the personal property assessable. The testimony of Mr. Weaver (and it is uncontradicted) is, that "the assessors assessed all the personal property, that they "knew of as being assessable, and which they supposed the "owner, if assessed, could not swear off." (Fol. 266.)

The finding of the court is to the same effect.

See finding 7th, p. 92.

(*h.*) The fact that there may have been men who were not assessed at all for personal property, who were notwithstanding assessable, and others who were not assessed to as large an amount as they ought to have been, if all the truth were known, is of no materiality on this point, unless the court is prepared to hold, that for every dollar of personal property that escapes taxation, the national bank shareholder is thereby assessed upon his shares at a greater rate than other moneyed capital, and that, therefore, all such assessments are absolutely void. Of course such a proposition is not to be discussed as one that could for a moment be entertained. If so, not a dollar of taxation upon bank shares could ever be levied. It is impossibe to ferret out all the personal property that is liable to taxation. No law yet in force in this State can produce it all for appraisement.

Miller, J., in delivering the opinion of the court in National Bank v. Kimball, 103 U. S., at p. 734 says:

"Perfect equality and perfect uniformity of taxation, as regards individuals and corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system that can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property

of all the citizens, and of those who are not citizens, in all the localities of a large State like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature, and of the evidence on which human nature is founded."

(*i.*) Real estate surely is not moneyed capital. It may be counted as a kind of double material The land itself is a natural agent, while the money spent in buildings upon it is regarded as fixed capital. If one buy land he may pay out his money capital for it, and the vendor has then the money capital, while the vendee has the land. In no sense is the owner of land alone, or of land and buildings, the holder thereby of moneyed capital.

Therefore, it may be conceded that the real estate was, during the times covered by this action, habitually assessed below its actual value, yet such assessment was not upon moneyed capital, and if, by virtue of a smaller assessment or valuation of real estate, a greater amount was left to be added to personal, yet it was upon personal property generally, and not upon the property in national bank shares only, that the assessment had its effect.

But in any event and upon any theory consistent with the law, as laid down by the Supreme Court, there is no habitual or intentional assessment of bank shares higher, in proportion to their actual value, than other moneyed capital generally.

(*j.*) The statute was designed to protect capital invested in national bank shares, from discrimination as between it, and *other* moneyed capital in the hands of individual citizens, and does not apply to assessments upon national bank shares *inter se.*

The language of the statute prohibits discrimination in taxation, between national bank shares and *other* moneyed capital in the hands of individual citizens; this does not mean other national bank shares, the language is, "*other moneyed capital,*" and hence even if some national bank shares were assessed at a lower rate, it would not be violation of this statute.

Certainly within this view, even if the one State bank was assessed lower, this would not bring it within the statute as interpreted by this court.

## VIII.

### THE OBJECTION MADE BY PLAINTIFF IN ERROR AS TO THE TAX OF 1873, IS UNTENABLE, AND WE DENY THAT HE IS ENTITLED TO RECOVER BACK THE TAXES OF 1873.

The statute of 1864 (section 41), assuming that it was in operation in 1873, at the time the tax for that year was assessed, is very different from U. S. R. S., section 5,219. It provided (1), for the *valuation* of the shares, but not at a greater rate than is assessed as other moneyed capital etc., and (2), that the *tax shall not exceed* the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.

(*a.*) In the case at bar, the tax did not exceed the rate imposed on the State banks, and there was no violation of the first subdivision.

(*b.*) As to the *valuation*, which was separately provided for in the act of 1864, the language applied to the valuation under that act is the same as to the taxation under section 5,219, *i. e.*, that it shall not be at a greater rate, etc., the language being similar to that of section 5219. The interpretation of this portion of the section must be the same as that of section 5219, R. S., viz.: that there must be a discrimination, habitual and intentional, etc. The fact that one State bank was assessed at a lower rate, would not, within the decisions of this court, applied to the act of 1864, be sufficient to render the assessment void.

(*c.*) The case of Van Allen v. The Assessors, 3 Wall, 573, cited by the appellant decided that because the statute of New York provided for no assessment *whatever* on the shares of State banks, it was void and hence is not applicable.

(*d.*) In any event, the same law applies as it does to the other assessments; if plaintiff's position be correct it is merely a matter of over-valuation and cannot be recovered here.

*Supra.*

## IX.

AS THIS CASE IS NOW PRESENTED, THERE IS NOTHING FOR THIS COURT TO REVIEW, AND THE JUDGMENT OF THE CIRCUIT MUST BE AFFIRMED.

1. Upon the question of an unlawful "discrimination," in violation of the federal statute, against the shares of the Exchange Bank, we claim that this court has disposed of the question: In the former case, 105 U. S., at p. 317, this court says, in discussing the claim made by plaintiff, upon which he claimed a new trial, and upon the allegation in the complaint as to an unlawful assessment because of a "greater rate":

"We are quite clear that the shares of the plaintiff are not "relieved from taxation, because a single bank of the State has "been favored, by mistake or by intention."

"For errors of this kind the statutes of New York provide the "correction, which should be taken in time, and we should be "very reluctant to hold that, when it has been shown that a "single bank or a single individual has been taxed less than he "should be, all other taxes, however just, are thereby invalidated."

"That the assessment of the shares of the Exchange Bank 'was "at a greater rate than was assessed upon other moneyed capital "in the hands of individual citizens of the State of New York.'"

"If by this it is supposed that a few individual instances may "be shown of partial assessments, favoring citizens as compared "with the national banks, we think it is erroneous."

We claim that the plaintiff in error, upon the retrial, has failed to make any proof which varies the facts outlined or suggested by the court, as above.

2. The case was remitted to the Circuit, pursuant to the direction of this court, and tried upon plaintiff's allegation, that the assessors habitually and intentionally, etc., assessed the shares of the National Exchange Bank at a higher rate than other moneyed capital in the hands of individuals.

105 U. S., 318.

Upon this question of fact, testimony was taken and proof made at the Circuit.

The plaintiff in error, sought to prove discrimination against these bank shares, by putting in evidence the facts as to assessments in the Sixth ward during the years in question, and particularly of bank shares.

(See Transcript of Record, p. 71.)

Also proof that the assessors assessed bank shares at their par value (fol. 241); that real estate was assessed at from forty to sixty per cent. of its actual value.

The defendant in error, proved by the assessor (p. 73, fols. 249, 250) THAT NO DISCRIMINATION WAS MADE AGAINST THE SHARES REPRESENTED BY PLAINTIFF IN ERROR.

That the assessment against the shares of the National Exchange Bank "was not intentionally made at a higher rate than other "moneyed capital in the hands of individual citizens."

"That there was no rule prescribed by anybody that he knew of, "or followed by the assessors, intentionally making the assessment "on shareholders in national banks at a greater rate than upon "other moneyed capital in the hands of individual citizens."

"In making assessments upon bank shares there was no intention to discriminate against holders of that kind of property for "the purpose of taxation."

"In the system of valuation adopted by the assessors, there was "no intention on their part to have the same operate unequally or "unjustly towards the holders of bank stock. The assessments "were made and the assessors acted in good faith."

See Testimony, fols. 249, 250.

*The facts affirmatively found by the Circuit Court are clear and conclusive.*

The court found:

"THE ASSESSORS DID NOT, AT ANY OF THE TIMES IN QUESTION, 'HABITUALLY OR INTENTIONALLY,' OR BY ANY RULE, PRESCRIBED "BY THEMSELVES, OR BY ANY ONE WHOM THEY WERE BOUND TO "OBEY, ASSESS THE SHARES OF NATIONAL BANKS, HIGHER IN PRO-"PORTION TO THEIR ACTUAL VALUE THAN OTHER MONEYED "CAPITAL GENERALLY."

Finding fifth, p. 92, Transcript of Record, fols. 316, 317.

"*That the plaintiff has failed to establish the allegations in said com*
"*plaint, that the several assessments therein referred to were at a greater*
"*rate than was assessed upon other moneyed capital in the hands of*
"*individual citizens of this State.*"

Formal decision, fourth p. 80, fol. 275.

"The method pursued by the assessors in assessing the "shareholders in national banks during all the period in question, in "this case, was generally satisfactory to the owners of national bank "stock in the city of Albany. with the exception of Mr. Williams, "and some few other shareholders in the National Albany Exchange "Bank, and such method was pursued by the assessors *with no pur-*
"*pose or intention of unduly assessing shares in national banks*, but "simply because it was thought by the assessors to be a way that was "most satisfactory to the owners of such property and the best in "itself."

Sixth finding, p. 92, Trans. Record, fol. 317.

"It was during the time in question, the *endeavor and intention of*
"*the assessors*, so far as possible, *to assess all personal property* that "was taxable in the hands of individual citizens in the city of "Albany, *and at its full value*, and they never neglected or refused "to assess such property at such value, so far as they were able, and "*they never had any intention to permit personal property or moneyed*
"*capital in the hands of individual citizens to escape taxation and at its*
"*full value.*"

Seventh finding, p. 92, Trans. Record, fol. 318.

"That the *moneyed capital* in the hands of *individual citizens*
"(other than the *shares of national banks*), which was at the "time in question assessed in the city of Albany, *was assessed at its*
"*full value.*

Eighth finding, p. 92, Trans. Record, fol. 319.

The proposed findings of fact, submitted to the court by the plaintiff, on the main question, (as to discriminations, habitual and intentional, or otherwise), were negatived by the court.

See plaintiff's proposed findings, ninth, p. 82, fol. 283, (*not found*).

Nineteenth, p. 85, fol. 293, (*not found*).

Twentieth and twenty-second, p. 86, fols. 294, 295, (*not found*).

The findings show, as above stated, that if there was any discrimination as to assessments of moneyed capital or personal property, it was in *favor* of national bank shares.

See Findings 7th, 8th, 9th, p. 92, Transcript Record.

Such being the findings of fact, we respectfully urge and insist that the judgment of the Circuit Court will not be disturbed by this court.

This Supreme Court has no authority on a writ of error to revise the evidence in the court below.

In a case tried by the court, without jury, no error of law, can be predicated of the conclusion of fact, where evidence is given but not excepted to,

This, too, where the *finding* was excepted to and alleged as error.

Booth v. Tiernan, 109 U. S., 205.

Where there is a general finding for defendant, and the court below also makes special findings on the issues, no error can be assigned on the latter.

Meath v. Mississippi Com., 109 U. S., 268.

It can only re examine the law as the judge has pronounced it upon a state of facts.

Hyde v. Booraem, 16 Pet., 169.
Hecht v. Boughton, 105 U. S., 236.
U. S. v. Dawson, 101 U. S., 569.
Miles v. U. S., 103 U. S., 304.

The only assignment of errors as to law questions in the case, are the second (fol. 349), seventh (fol. 351), eighth (p. 102), and fourteenth (fol. 355).

As the questions sought to be presented are disposed of by the findings of fact, no question is raised for the court to consider.

Cases *supra*.

X.

THE APPEAL SHOULD BE DISMISSED AND JUDGMENT FOR DEFENDANT IN ERROR, AFFIRMED.

WHEELER H. PECKHAM,
NEW YORK CITY.

S. W. ROSENDALE,
ALBANY, N. Y.,
*Counsel for Defendant in Error.*

*March*, 1887.

121-535

# UNITED STATES SUPREME COURT.

**HATTIE E. STANLEY, Executrix, &c.,**
*Plaintiff in Error,*

*vs.*

**THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,**
*Defendant in Error.*

# Supplemental Brief for Defendant in Error.

WHEELER H. PECKHAM,
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*Of Counsel for Defendant in Error.*

BURGOYNE'S "Quick" Print, COR. WALKER AND CENTRE STS., N. Y.

# UNITED STATES SUPREME COURT.

HATTIE E. STANLEY, Executrix, &c.,
Plaintiff in Error,

AGAINST

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,
Defendant in Error.

## Supplemental Brief for Defendant in Error.

In the first point of his brief plaintiff in error claims that the record shows that the assessors violated the law as stated in the supplemental opinion of this Court in this case, 105 U. S. Rep., 318.

Attention is called to the fact that this case was tried by the Court alone without a jury, and that the Court made findings of fact and conclusions of law as required by law and practice.

These "findings" are found in three different places in the record:

1. In the formal decision primarily filed by the Judge (p. 79, fol. 273).

2. In the action of the Court, upon certain requests to find, submitted by the plaintiff in error and below (p. 80, fol. 277).

3. In the action of the Court, upon certain requests to find, submitted by the defendant in error and below (p. 88, fol. 302).

In these findings it appears that the Court below found the facts against the contention of the plaintiff.

That is, on the issue, *of fact*, raised by the pleadings, the decision of the Court below was in favor of the defendant.

Record, p. 80; finding fourth, p. 82; action on ninth request of plaintiff, p. 92; action on fifth to tenth, inclusive, requests of defendant.

These findings of fact are conclusive in this Court.

This Court has no jurisdiction to review alleged errors of fact, when made by the Court, any more than if made by a jury. That is the rule in the State Court.

Auburn City Nat'l Bank vs. Hunsiker, 72 N. Y., 252.

Stillwell vs. Mutual Life Ins. Co., 72 N. Y., 385.

And is the rule in this Court (U. S. Rev. Statutes, § 1011).

Where a fact is attempted to be proved by circumstances the proper inference to be drawn from such circumstances is a question of fact, and for the jury or trial tribunal.

In the case at bar the finding of the Court below is amply sustained by evidence (see Deposition of Weaver, p. 73).

And the Court will notice that while on cross-examination the witness says that *he* had reason to believe that the shares of one bank were of greater value than the shares of the Exchange Bank, yet he does not say that the assessors other than himself had any reasons to so believe.

The computations on page 10, *et seq.*, of plaintiff's brief have no tendency to prove that the shares of national banks were assessed at a greater rate than other moneyed capital in the hands of individual citizens, as provided in § 5219. They prove the direct contrary.

They claim to show that while the property of the individual was assessed at its full value bank stock was assessed at an average of fifty-eight per cent. of its value, and that of plaintiff's bank at much less than its value.

So far as plaintiff shows inequality among the banks themselves such proof has no tendency to prove the allegations of the complaint or conflict with § 5219. The Revised Statutes do not prescribe equality among the banks themselves.

True the State law gives but one rule of assessment, but the complaint is not based on and states no violation of the State law, and if it did the remedy for inequality of assessment is by application to the assessors and not by action.

It will be noticed that the plaintiff's stock has not been assessed above but below its value. The law requires it to be assessed at its value. Plaintiff's complaint is that as to other *banks* the assessment has been still lower.

He does not complain nor is there a word of evidence to show that the rate of assessment on his shares is higher than that on other moneyed capital in the hands of individuals.

Unless he shows that, he does not come within the protection of § 5219 of the Revised Statutes.

Even as to equality, the proofs fall far short of showing any.

The par value of bank stock is *prima facie* its actual value. There is no rule or law that market value is the equivalent of taxable value. As is shown by the opinion of the Court below they may be very different.

Assessors know that the bank has the par of its stock paid in.

The ordinary inference is that the bank has not impaired its capital and that such profits as it has made are divided among its stockholders as made.

If by reason of exceptional ability in its management

its dividends are larger and the market value of its shares increased that is not *taxable* value. Persons are taxed—not property—but they are taxed in respect to their *property* and not in respect to their *capacity* to use it productively.

Again, so far as complaint is made because of unequal taxation on real estate, it does not appear but that the plaintiff and his bank have been the greatest beneficiaries by such inequality.

Plaintiff's remedy, if he felt aggrieved by the action of the assessors, was by *certiorari*, or by mandamus to the assessors prior to September 1st, in each year.

His *certiorari* proceedings in the State Supreme Court, as shown in the record, were defective for want of proof that he was injured. See People vs. Assessors 2 Hun, 584. The Court said, p. 586: "They ask for a reduction of the assessed value of their shares of stock, which are already assessed too low;" and p. 590: "But in this case the return does not contain these essential facts, and we have no means of determining, even from annexed exhibits, the real value of the stock of any of the banks except the relators' and the one selected as the subject of their complaint."

There was no error in excluding testimony as to non-compliance with the State law as to manner of assessment or as to the oath of assessors (p. 79).

(*a*) No such questions were raised by the pleadings.

(*b*) Its exclusion was required by the terms of the stipulation (p. 50). Such testimony has no tendency to show an unlawful discrimination against National Bank stock under § 5219 of the Revised Statutes.

The question suggested by plaintiff's fourth point is not in this record.

It is not made in the pleadings, has not been litigated, and was not presented to or decided by the Court below.

We respectfully submit that it cannot be here considered.

Plaintiff's sixth point—that he is entitled to recover back the tax of 1873 because that tax was limited by the United States law of 1864 and not by the Revised Statutes—is not well taken.

1. Because the complaint does not allege conflict with the law of 1864, but with § 5219 of the Revised Statutes, and the Court below had no such point presented to it, and decided no such point. The jurisdiction of this Court is limited to the review of actual determinations.

(See complaint, p. 4, fol. 10; 7, fol. 20, 9, fol. 28, &c.)

2. The act of 1864 would not help plaintiff. That *one* State bank happened to get a more favorable assessment would not invalidate. The rule to invalidate must be one which discriminates in favor of a State bank *as such*. The "rule," as plaintiff calls it, of the assessors had no relation to State or national banks as such.

The judgment should be affirmed.

WHEELER H. PECKHAM,
S. W. ROSENDALE,
Of Counsel for Defts. in Error.

121-535

APR 27 1887
JAMES H. McKENNEY
CLERK

# SUPREME COURT OF THE UNITED STATES.

HATTIE E. STANLEY, Executrix, &c.,
*Plaintiff in Error,*
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,
*Defendant in Error.*
**No. 222.**

CHAUNCEY P. WILLIAMS,
*Plaintiff in Error,*
*vs.*
THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY,
*Defendant in Error.*
**No. 387.**

# SUPPLEMENTAL BRIEF

**For Defendant in Error.**

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# Supreme Court of the United States.

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|---|---|
| HATTIE E. STANLEY, Executrix, &c., Plaintiff in Error, AGAINST THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendant in Error. | No. 222. |
| CHAUNCEY P. WILLIAMS, Plaintiff in Error, AGAINST THE BOARD OF SUPERVISORS OF THE COUNTY OF ALBANY, Defendant in Error. | No. 387. |

The plaintiff in error in above-entitled causes has by leave of Court filed a supplemental brief designed to show that by the law of New York there is no power in assessors to correct unequal assessments and no power in the State Courts to review decisions of the assessors.

If such a condition of the law of New York has any relevancy to the controversy in these cases it must be as to the point made by plaintiffs in error that the assessors have by a law of their own adopted a rule of discrimination against the shares of national banks